

TDS on Transfer of Immovable property other than agricultural Land (Sec 194 IA of Income Tax Act)

Q: What is this new provision about?

A: From 1st of June 2013, if you are buying a property you need to deduct tax at 1% of the consideration which you pay to seller at the time of making the payment.

Q: When the tax is to be deducted – at the time of credit of consideration or payment of consideration?

A: Tax has to be deducted either at the time of credit or payment of consideration, whichever is earlier. Effectively in cases involving individuals TDS would be required to be deducted at the time of payment of consideration.

Q: Is there any minimum payment amount prescribed for this provision to apply?

A: Yes. If and only if the Sale Value for the transfer of an immovable property is Equal to or more than 50 lakh rupees.

Q: When will I need to pay the tax to income tax department after deducting ?

A: Tax has to be deducted at the time of making the payment. But it is required to be remitted to Income tax department within **7 days of the following month in which TDS is deducted** along with statement in **Form 26QB**

Q: What is the penalty for delayed payment?

A: In case of delay, Buyers should pay interest @ 1.5% per month / part of the month to the department along with TDS amount

Q: Does the buyer then need to apply for TAN (Tax deduction Account Number)?

A: The individual buyer need not apply for TAN

Q: Does the purchaser need to file a TDS return or to issue a TDS certificate?

A: No. All he/she is required to do is to fill in a form online (www.tin-nsdl.com), and either make an e-payment of the tax or physically make the payment in a bank branch.

Q: How will the seller get credit for the TDS?

A: The seller would get credit for the TDS on the basis of his PAN, which is required to be mentioned in the online form.

Q: If the seller does not have a PAN, what will happen?

A: If the seller does not have a PAN, the rate of TDS would be 20%.

Q: What are the different types of properties that come under the definition of immovable property?

A: The immovable property may be in the nature of land, buildings or flats.

Q: Will TDS be applicable in case of purchase of agricultural land?

A: No. The deduction does not apply to purchase of agricultural land as long it is not located within municipal limits or within the specified distance from municipal limits.

Q: If I buy a new property from a builder, will this tax still to be paid?

A: Whether the seller is a builder or a flat owner making a subsequent sale this tax would have to be paid.

Q: Does this tax has anything to do with resultant capital gains?

A: This deduction has nothing to do with the quantum of capital gains.

Q: What will happen in case the seller of the property is a non-resident?

A: When the seller is a non-resident, these provisions would not apply, and the earlier TDS provisions applicable to purchase of property from non-residents would continue to be applicable.

Q: Suppose in Jan 2013 I agreed to purchase a property for Rs. 75 lakhs. I made my first payment of Rs. 30 lakhs towards that in April 2013. The rest payment of Rs. 45 lakhs I am going to make in July 2013. In this case will I still need to pay 1% TDS?

A: Yes. Though you need not to pay any tax on payments made before 1st June 2013, but for the purposes of computation of the limit of Rs. 50 lakhs i.e. the total consideration, all payments including payments made before 1st June 2013 would have to be considered. So you will need to pay here Rs. 45,000 as TDS i.e. 1% of Rs. 45 lakhs.

Q: The applicability of TDS would depend on actual consideration or stamp duty valuation?

A: The applicability of TDS is only to the actual consideration specified in the transfer documents, and is not on the basis of a notional fair market value, such as a stamp duty valuation, even though such valuation may be higher.

Q: Does the actual consideration include any other payments other than the property valuation?

A: Yes, the consideration would include various incidental payments required to be made to the seller, such as legal fees, contribution towards shares, payment for parking spaces etc.

Q: Would stamp duty, registration fees or transfer fees be subjected to TDS?

A: No. Stamp duty, registration fees or transfer fees which are to borne by the purchaser would not be regarded as payments being made to the seller as consideration and hence would not be subjected to TDS.

Q: What is the position regarding joint purchasers or joint sellers? Is the limit of Rs. 50 lakhs to be seen vis-à-vis payment made by each purchaser to each seller, or is it a composite limit of the total price of the property?

A: Clarity is awaited here. Though to be on the safer side, it is advisable to deduct TDS wherever the consideration under a single agreement exceeds Rs. 50 lakh, irrespective of the number of transferors or transferees.

Q: How the TDS would be paid if I buy the property taking finance from a bank or housing finance company?

A: In such case you need to request the bank/finance company to pay the seller the loan amount net of TDS. You then pay the TDS to the government, and claim reimbursement of the TDS from the bank/finance company.

As per Finance Bill of 2013, TDS is applicable on sale of immovable property wherein the sale consideration of the property exceeds or is equal to Rs 50,00,000 (Rupees Fifty Lakhs). Sec 194 IA of the Income Tax Act, 1961 states that for all transactions with effect from June 1, 2013, Tax @ 1% should be deducted by the purchaser of the property at the time of making payment of sale consideration. Tax so deducted should be deposited to the Government Account through any of the authorised bank branches.

Points to be remembered by the Purchaser of the Property:

1. Deduct tax @ 1% from the sale consideration.
2. Collect the Permanent Account Number (PAN) of the Seller and verify the same with the Original PAN card.
3. PAN of seller as well as Purchaser should be mandatorily furnished in the online Form for furnishing information regarding the sale transaction.
4. Do not commit any error in quoting the PAN or other details in the online Form as there is no online mechanism for rectification of errors. For the purpose of rectification, you are required to contact Income Tax Department.

Points to be remembered by the Seller of the Property:

1. Provide your PAN to the Purchaser for furnishing information regarding TDS to the Income Tax Department.
2. Verify deposit of taxes deducted by the Purchaser in your Form 26AS Annual Tax Statement.

Frequently Asked questions (FAQ)

Q: What is TDS on property?

A: The Finance Bill 2013 has proposed that purchaser of an immovable property (other than rural agricultural land) worth Rs. 50 lakh or more is required to pay withholding tax at the rate of 1% from the consideration payable to a resident transferor.

Q: Who is responsible to deduct the TDS on sale of Property?

A: According to rules in respect of tax deducted at source, buyer of the property would have to deduct the TDS and deposit the same in Government treasury.

Q: I am Buyer, do I required to procure TAN to report the TDS on sale of Property?

A: Buyer or Purchaser of the property is not required to procure Tax Deduction Account Number (TAN). The Buyer is required quote his or her PAN and sellers PAN.

Q: What if I don't have the PAN of the seller is it Mandatory?

A: PAN of the seller is mandatory. The same may be acquired from the Seller before effecting the transaction.

Q: How can I use this facility to pay TDS on sale of Property?

A: The Buyer of the property (deductor of tax) has to furnish information regarding the transaction online on the TIN website. After successfully providing details of transaction deductor can:

- Either make the payment online (through e-tax payment option) immediately;
- Or make the payment subsequently through e-tax payment option (net-banking account) or by visiting any of the authorized Bank branches. However, such bank branches will make e-payment without digitization of any challan. The bank will get the challan details from the online form filled on www.tin-nsdl.com

Q: If I encounter any error on NSDL site while entering the online form details what should I do?

A: If any problem is encountered at the NSDL website while entering details in the online form then contact the TIN Call Center at 020 – 27218080 or email at tininfo@nsdl.co.in (Please indicate the subject of the mail as Online Payment of Direct Tax).

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