

Don't forget to deduct TDS before buying property even if the seller is NRI as buyer will risk being labelled as tax evader

By Neelanjit Das, ET Online | Last Updated: Apr 02, 2025, 11:36:00 AM IST

Synopsis

TDS on house property: The Income Tax Department said to follow Section 194 IA which relates to Tax Deducted at Source (TDS) on buying a house property. "Failure to deduct tax under Section 194-IA may result in the person i.e. the transferee being deemed to be treated as an assessee in default. Failure to deduct tax will attract interest and penalty also," said the Income Tax Department.



Where a resident purchases a property from non-resident then he liable to withhold taxes at the rate of 12.5% plus applicable surcharge and cess. The balance sale consideration can be directly remitted to the non-resident's NRO account

The [Income Tax](#) Department has released a new brochure detailing [Tax](#) Deducted at Source (TDS) payment obligations for individual taxpayers, especially those arising on account of buying of property except agricultural land and paying house rent above a specified limit. These [TDS](#) related provisions are applicable to non-resident taxpayers also. If any taxpayer does not follow these TDS provisions, then they are to be considered as "assessee in default" and tax evader in some cases.

Income Tax Guide

[Income Tax Slabs FY 2025-26](#)

[Income Tax Calculator 2025](#)

[New Income Tax Bill 2025](#)

When proper TDS reporting and tracking mechanism was not in place the TDS evasion could go through without being scrutinized. Ramakrishnan Srinivasan, former chief commissioner of Income Tax says "I was one of the officers who were persistently suggesting CBDT to bring in TDS for property transactions. This is based on a case I handled as Commissioner (Appeals) wherein the Income Tax Department got information from the Sub Registrar office about the sale of huge property in a metro city by a person who did not offer it in her Income Tax Return for capital gains tax. By the time assessment was done it was about 4 years from the date of transfer. In summary this jeopardized the tax collection process.

However, things have changed a lot since then. "The introduction of TDS on property sales has facilitated tracking of transactions by the tax department and now facilitates sending prompts to taxpayers of their advance tax liability in the year of transaction itself."

What did the Income Tax Department say about following TDS provisions while buying the property?

According to the Income Tax Department brochure here are the details:

Section 194-IA: Payment on transfer of certain immovable property other than agricultural land

1. Who has to deduct TDS under Section 194-IA:

Any person, being a buyer, responsible for paying to a resident seller any sum by way of consideration for transfer of any immovable property (other than agricultural land) shall be responsible to deduct TDS under Section 194-IA.

2. Threshold limit under Section 194-IA:

No deduction under Section 194-IA shall be made where the consideration for the transfer of an immovable property and the stamp duty value of such property, are both less than Rs 50 lakh.

3. When to Deduct TDS under Section 194-IA:

Tax shall be deducted under this section:

- Either at the time of credit to the account of the payee, or
- At the time of payment thereof, whichever is earlier.

“For this purpose, ‘payment’ can be in cash or by issue of a cheque or draft or by any other mode.

4. Rate of TDS under Section 194-IA Tax:

1% of consideration or Stamp Duty Value, whichever is higher. Rate of TDS is 20% if PAN/Aadhaar is not furnished by the deductee as per Section 206AA. However, higher rate of TDS as per Section 206AB for non-filers of ITR does not apply to deduction under Section 194-IA with effect from April 1, 2025. Similarly, when PAN-Aadhaar is not linked, a higher rate of TDS as per Section 206AA will apply.

5. Other issues:

- If the immovable property is partly financed by Bank/Lender, the TDS will be required to be deducted by the transferee on the entire amount of consideration or Stamp Duty Value, whichever is higher, irrespective of the amount of financing.
- For payment of installments, TDS to be deducted on each installment paid.

6. Non applicability of Section 194-IA:

If the seller is an NRI, then tax deduction shall be made by the buyer as per Section 195 and not Section 194-IA.

"It is important to know that not all payments to non-residents require deduction of tax under Sec 195. Section 195 requires the payer to deduct TDS only when the payment made to a non-resident is chargeable to tax in India," says Ankit Jain, Partner, Ved Jain and Associates.

Jain explains with an example. "For example: if a payment is being made under LRS for purchase of property outside India, there's no tax required to be deducted since the seller's income on such foreign property is not taxable in India. However, when buying property in India from a non-resident the tax is required to be deducted as the income from such property based in India is taxable in India."

Things to know when buying property from an non-resident Indian (NRI)

Chartered Accountant (Dr.) Suresh Surana explains what does an Indian resident buyer needs to know before buying a property from an NRI seller:

- In case of buyer is resident, he is responsible for deducting TDS when purchasing property from an NRI seller. In case of NRI seller, the provisions of deducting tax at sources is governed by Section 195 of the Income Tax Act. If the property is a Long-Term Capital asset (property held for more than 2 years) held by the NRI, the tax rates would be as under:
- TDS is to be deducted at the rate 20% of sale value of property, if the property is sold before 23 July 2024, or
- TDS is to be deducted at the rate 12.5% if the property is sold on or after 23 July 2024, plus, applicable surcharge and 4% health and education cess.

Process after deducting TDS –

- The resident buyer must obtain a Tax Deduction Account Number (TAN) to deduct and deposit TDS.
- TDS is deducted at the time of payment and deposited via e-challan by the 7th of the next month.
- The buyer has to file the TDS return in Form 27Q.

Points to remember :

- While determining the TDS rates, the seller's residential status (Indian resident) determines the TDS rule, not the buyer's status.
- Unlike section 194IA, there's no Rs. 50 lakh threshold which means section 195 applies to all transactions with NRIs, regardless of sale value of consideration.
- The NRI seller has the option to provide a lower TDS certificate (if that is the case) and share it with the resident buyer, who shall deduct at the tax rate specified in such certificate. If the NRI seller doesn't provide a lower TDS certificate, the buyer shall deduct TDS on the full sale consideration and not just the capital gain unless the seller provides a lower / nil TDS certificate under section 197.

Jain from Ved Jain and Associates explains that Section 195 of the Income Tax Act, 1961, mandates that any person making a payment to a non-resident, which is chargeable to tax in India, must deduct Tax Deducted at Source (TDS) at the time of crediting or making the payment, whichever is earlier. "When an Indian resident purchases immovable property from a Non-Resident Indian (NRI), the buyer is obligated to deduct TDS on the entire sale consideration, irrespective of the capital gains arising to the seller. This ensures that the tax liability on the income earned by the NRI from the sale is collected at the source itself," says Jain.

Jain shares some key aspects:

- It is important to know that while property from a non-resident, the TDS rate will be higher than the standard 1% applicable on resident seller. The buyer has to obtain a Tax Deduction Account Number (TAN), deposit the TDS through a challan and file return in Form 27Q. Form 26QB which is applicable for resident sellers of immovable property cannot be applied here.

- If the seller NRI believes his applicable tax would be lower than the TDS deducted, he can apply for a certificate of lower deduction to the income tax authorities giving details of why he believes the tax rate would be lower. The tax authorities usually take 4-6 weeks for issue of such certificate.

Rashi Khanna, Associate Partner, DMD Advocates shares some important aspects:

- In terms of the Section 195 of the Income Tax Act, 1961, any person responsible for making payment to a non-resident at the time of credit of such income to the account of the payee shall deduct income-tax thereon at the rates in force. The taxes are liable to be withheld whether or not the payee has a residence / place of business / business connection in India.
- Where a resident purchases a property from non-resident then he liable to withhold taxes at the rate of 12.5% plus applicable surcharge and cess. The balance sale consideration can be directly remitted to the non-resident's NRO account.
- The credit of taxes withheld by the buyer and deposited to the treasury of the Central Government can be availed by the non-resident seller while discharging their capital gains liability. For availing the credit, the seller should obtain a copy of Form 16A from the buyer / purchaser.

The buyers need to be cautious about withholding as any failure to withhold tax or short deduction of taxes would entail interest and penal consequences. "The buyer, in case of non-withholding, shall be deemed to be an assessee-in-default under section 201. He shall be liable to pay interest under section 201(1A) at rate of 1 % per month and may also be made liable to pay penalty under section 271C. The penalty levied under section 271C shall be equal to the amount of taxes that were liable to be withheld under section 195," says Khanna.

Pallav Pradyumn Narang, Partner, CNK, highlights a key challenge arises due to the difference in TDS rates. He says: "While tax deducted at source (TDS) for residents is 1%, the applicable rate for non-residents is 12.5%, plus cess and surcharge. This results in significant cash flow blockages for non-residents, especially in cases where the actual capital gains are much lower than the tax withheld."

Narang shares the solution to the above challenge. He says: "To address this issue, non-residents can apply for a certificate of lower deduction under Section 197. This requires submitting an application to the tax officer, along with documentary evidence supporting the actual capital gains. If approved, the tax officer can issue a certificate allowing the buyer to deduct tax at a lower rate, easing the cash flow burden."

Narang shares another complication which may arise from the high TDS rate. "The complication is that if substantial tax amounts are withheld but the taxable income is relatively low, these cases often get flagged for scrutiny, leading to further delays in receiving refunds. Thus, obtaining a lower deduction certificate not only helps with immediate cash flow concerns but also minimizes the risk of prolonged refund delays due to scrutiny," says Narang.

7. Definitions under Section 194-IA:

- "Consideration" for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.
- "Immovable property" means any land (other than agricultural land) or any building or part of a building.
- "Stamp Duty Value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purposes of payment of stamp duty in respect of an immovable property.

8. Failure to Deduct the TDS:

Failure to deduct tax under Section 194-IA may result in the person i.e. the transferee being deemed to be treated as an assessee in default. Failure to deduct tax will attract interest and penalty also.

9. Time limits and procedure of depositing TDS and Issue of TDS certificate:

- Both transferee and transferor must have Permanent Account Number (PAN).
- Transferee is not required to hold/obtain TAN for payment of TDS.
- Payment of TDS can be made through online or bank.
- Online payment of challan is available on TIN/NSDL website.
- Any sum deducted under Section 194-IA shall be paid to the credit of the Central Government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QB.
- The person responsible for deduction of tax under Section 194-IA shall furnish the certificate of deduction of tax at source in Form No. 16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No. 26QB under rule 31A after generating and downloading the same from the web portal.

Steps to file Form No. 26QB:

- **Step 1:** Go to TIN NSDL website (www.tin-nsdl.com)
- **Step 2:** Under 'TDS on sale of property', click on 'Online form for furnishing TDS on property (Form 26QB)
- **Step 3:** Select the applicable challan as "TDS on Sale of Property".
- **Step 4:** Fill the complete form as applicable. "User should be ready with the following information while filing the Form 26QB:
 - PAN of the seller & buyer,
 - Communication details of seller & buyer,
 - Property details,
 - Amount paid/credited & tax deposit details.

Step 5: Submit the duly filled form to proceed. A confirmation screen appears. After confirming, a screen appears showing two buttons as "Print Form 26QB" and "Submit to the bank". A unique acknowledgement number is also displayed on the screen. It is advisable to save this acknowledgement number for future use.

Click on "Print Form 26QB" to print the form. Then click on the "Submit to the bank" button to make the required payment online through internet banking. Then proceed to the payment page through the internet banking facility of various banks.

Step 6: On successful payment, a challan counterfoil will be displayed containing CIN, payment details and bank name through which e-payment has been made. This counterfoil is a proof payment being made.

Proceed to TRACES portal (www.tdscpc.gov.in) after five days to download Form 16B.

Steps to download Form 16B:

- **Step 1:** Register & login on TRACES portal (www.tdscpc.gov.in) as taxpayer using your PAN.
- **Step 2:** Select "Form 16B (For Buyer)" under "Downloads menu."

- **Step 3:** Enter the details pertaining to the property transaction for which Form 16B is to be requested. Enter the Assessment Year, Acknowledgement Number, PAN of Seller and click on “Proceed”.
- **Step 4:** A confirmation screen will appear. Click on “Submit Request” to proceed.
- **Step 5:** A success message on submission of download request will appear.

“Please note the request number to search for the download request,” said the Income Tax Department.

Step 6: Click on “Requested Downloads” to download the requested files. Search for the request with the request number. Select the request row and click on the “HTTP download” button.

What can happen to a taxpayer if he is classified as an assessee in default of Section 194-IA?

Chartered Accountant Abhishek Soni, co-founder, Tax2Win, says: "Under Section 194-IA, the tax amount deducted during a property transaction must be paid to the government within 30 days from the end of the month in which the TDS was deducted. Non-payment of TDS under Section 194IA i.e. TDS on sale of property can lead to several consequences, including penalties and interest charges.

- If TDS is not deducted or not deposited on time, interest is charged at the rate of 1.5% per month or part of a month from the date on which TDS was deductible to the date on which TDS is actually paid.
- The penalty for non-deduction of TDS is equal to the amount of TDS that should have been deducted.
- The penalty for non-deposit of TDS is equal to 1.5% of the TDS amount for each month or part thereof that the TDS remains unpaid.
- A late fee of Rs. 200 per day is also levied for default in furnishing the statement of TDS (Form 26QB) within the prescribed time under Section 234E. The total late filing fee cannot exceed the amount of TDS that is required to be deducted under Section 234E
- Other than this, under Section 271H, on non-filing of TDS statement or for incorrect details in the statement, the Assessing Officer may also impose a penalty which can range from Rs. 10,000 to Rs. 1,00,000.
- In severe cases, non-payment of TDS can lead to prosecution, which may result in imprisonment for a term ranging from three months to seven years."

(Originally published on Mar 29, 2025)

Lessons from the Grandmasters