

Withholding Tax on the purchase of Immovable Property

[Section 194-IA]

Any buyer paying consideration for transfer of an immovable property (other than agricultural land) to a resident seller, is required to withhold taxes (Tax Deduction at Source), commonly known as “TDS” in India. This note provides a bird’s eye view of the related provisions and compliance thereof.

Applicability:

TDS is to be withheld by any buyer on purchase of such property exceeding INR 50,00,000 from any Resident. This consideration is inclusive of all charges i.e. club membership, car parking, maintenance electricity, water facility fee etc.

Until 1st October, 2024 if an immovable property is owned jointly by two persons equally, then these provisions shall be applicable if the consideration from individual buyer or SDV, both, exceeds INR 50,00,000.

Finance Act, 2024, proviso to Section 194-IA (2) now provides that with effect from 1st October, 2024 where there are multiple transferors or transferees, the consideration shall be the aggregate of amounts payable by all transferees to all transferors for the transfer of the immovable property, i.e. aggregate consideration has to be considered for the purpose of determining the limit of INR 50,00,000 under the sub-section (2).

Henceforth, to check the applicability of TDS under section 194-IA an assessee who is buying any immovable property will have to consider the aggregate consideration payable towards the purchase of property instead of checking the limit individually for each buyer.

Buyer shall be the person other than the person responsible for paying compensation on account of compulsory acquisition of any immovable property [Section 194LA]

Timing and Rate of withholding:

TDS must be deducted earlier of:

- time of payment
- OR
- credit account of payee

TDS Rate: 1% of purchase consideration or stamp duty value “SDV” whichever is higher.

However, if PAN of the seller is not available then TDS rate shall be 20%. [Section 206AA]

Stamp duty value means the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty.

Compliance:

In view of the simplicity involved, TAN is not necessary if TDS is deducted under this section.

Due date to e-file challan cum return: Purchaser will file Form 26QB within 30 days from end of month of deduction & issue TDS certificate in Form 16B to the seller within next 15 days.

For e.g.: In case the buyer has deducted TDS on purchase in October, 2024; he is required to e-file Form 26QB on before 30th November, 2024

Interest:

Non-Compliance	Interest computation	For the period
Non deduction	1% per month or part there-of	From the due date of deduction till the date of deduction
Non payment	1.5% per month of part there-of	From due date of payment till the date of payment

Penalty:

- Fees for failure to submit Form 26QB = Rs. 200 per day of default [Section 234E]
- If the delay is more than 1 year then the fees = shall not be less than Rs. 10,000 which can extend upto Rs. 1,00,000 [Section 271H]
- Failure to provide Form 16B = Rs. 100 per each day of default [Section 272A]
- TDS not deducted OR deducted but not deposited = 100% of TDS amount [Section 271C]

Penalty cannot exceed the amount of TDS.

Important Note:

This communication is intended to provide a general introduction and guidance on the subject matter and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.

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