

## TDS on Purchase of Property from NRI – Section 195

When purchasing a property from NRI – TDS is required to be deducted on Capital Gains and not on the Sale Price. The Procedure, TDS Rate and compliances are very different in case of purchase of property from NRI as compared to purchase of property from a Resident Indian and in this article; we would mainly be talking about TDS Deduction for purchase of property from NRI.

## TDS Rate on Purchase of Property from NRI

In case of purchase of property from NRI, TDS under Section 195 is required to be deducted on the Capital Gains as per the below mentioned schedule:-

Long Term Capital Gains – Property held for more than 3 years – 20.6%

Short Term Capital Gains – Property held for less than 3 years – [Income Tax Slab Rates](#) of Seller

This TDS is required to be deducted whenever any payment is made to the NRI for purchase of property. Even if any advance is being paid for purchase of property – TDS is required to be deducted. Moreover, this TDS on purchase of Property from NRI is required to be deducted irrespective of the Transaction Value of the Property. Even if the value of property is less than Rs. 50 Lakhs – this TDS is required to be deducted.

## Amount on which the TDS is required to be deducted

The TDS is required to be deducted on the Capital Gains. The seller will himself tell that the amount of Capital Gains arising in his hands from sale of this property. The seller shall intimate the buyer of the Capital Gains arising in his hands and the buyer will deduct the TDS accordingly.

However, this computation of Capital Gains cannot be done by the Seller himself and should be done by the Income Tax Officer. The seller shall [approach his Income Tax Officer](#) and request him to compute his Capital Gains.

The Income Tax Officer shall compute the Capital Gains of the seller and intimate the seller by issuing a certificate mentioning the computation of Capital Gains. The seller is required to give this certificate to the buyer and the buyer will deduct the TDS on the Capital Gains arising to the seller.

**In case this certificate is not obtained by the seller from the Income Tax Officer, the TDS should be deducted on the Total Sale Price and not on the Capital Gains. Therefore, it is very important for the seller to obtain this certificate from the Income Tax Officer.**

It is advisable that the details of the TDS deducted shall be mentioned in Property Sale Agreement. It should also be noted that it is not the responsibility of the Registrar to ensure the TDS Deduction. The Registrar will register the Sale Agreement even if the TDS is not deducted or wrongly deducted.

If the TDS is wrongly deducted or not deducted, the Income Tax Department will not do anything to the seller but will catch hold of the buyer of property to deposit the TDS. If the buyer forgot to deduct the TDS or deducted less TDS – the Income Tax Dept. will recover the TDS from the buyer.

## TDS Payment, TDS Return and TAN No.

There are a lot of compliances to be taken care of when buying a property from a NRI. Firstly, the buyer should have a TAN No. for deduction of TDS. TAN No. is not required in case the property is purchased from a Resident Indian but is required in case the property is purchased from a Non Resident Indian.

TAN No. stands for Tax Deduction and Collection Account No. and is different from a PAN No. Only the buyer is required to have this TAN No. and not the seller. In case the buyer does not have the TAN No., he should apply for the same before deduction of TDS.

The TDS so deducted by the buyer shall be deposited with the Govt within 7 days from the end of the month in which the TDS has been deducted. For example: If TDS is deducted in the month of June, then the TDS should be deposited with the Govt. on or before 7th July.

This TDS is required to be deposited along with Challan No./ ITNS 281 and can be deposited online as well as through various bank branches.

After the deposit of TDS, the buyer is required to furnish a TDS Return. This TDS Return is required to be furnished in Form 27Q and is required to be furnished separately for each quarter in which the TDS has been deducted. This TDS Return is required to be deposited within 31 days from the end of the quarter in which the TDS has been deducted.

After the deposit of TDS and filing of TDS Return, the buyer is also required to furnish [Form 16A](#) to the seller of property

## THINGS TO BE TAKEN CARE BY THE SELLER

The seller shall ensure the following:-

1. Try to get the Certificate from the Income Tax Officer for computation of Capital Gains which will lower the TDS to be deducted.
2. The Income Tax Officer may take around 30 days to issue to certificate for lower deduction of TDS and will ask for various documents for checking details like Purchase Price, Date of Purchase, any expenses on Renovation/ Construction etc.

3. In case the Seller is unable to get the Certificate, the TDS would be deducted on the Transaction Value and will lead to excess deduction of TDS. However in such a case, the seller can claim refund of TDS at the time of filing of the Income Tax Return.
4. Apart from the Property Registration Documents, the seller should also collect Form 16A from the Buyer.
5. The seller can reduce his Capital Gains which will lead to lesser TDS Deduction if the seller intends to reinvest the Capital Gains in India.

## **THINGS TO BE TAKEN CARE OF BY THE BUYER**

There are a lot of things to be taken care of by the Buyer in case of purchase of property from a NRI.

The buyer shall:-

1. Deduct TDS at the time of each payment and not at the time of Registration of Property.
2. The TDS so deducted shall be deposited with the Income Tax Dept as per the schedule for deposit of TDS.
3. TDS Return shall also be furnished with the Income Tax Dept as per the schedule for filing of TDS Return.
4. The Buyer shall also issue Form 16A to the seller after filing the TDS Return. Form 16A is a TDS Certificate which states that the buyer has deposited the TDS with the seller.
5. In case of late payment of TDS – interest would be levied @ 1%/1.5% per month
6. In case of late filing of TDS Return – Penalty of Rs. 200 per day would be levied. The Income Tax Officer may also levy a penalty of upto Rs. 1 Lakhs.
7. In case of Home Loan, TDS is to be deducted when payment is made to the Seller and not when the EMI is paid to the Bank.