

SHORT NOTES

TDS REQUIRMENT FOR TRANSACTION OF SALE - IMMOVABLE PROPERTY

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Resident seller - SECTION 194IA

Section 194 IA of the Income Tax Act, 1961 (“Act”) states that tax @ 1% should be deducted by the purchaser of the property at time of making payment of sale consideration to a resident transferor (seller). PAN of the seller as well as buyer should be mandatorily furnished in an online Form 26QB for the mere purpose of furnishing information regarding the property transaction. TDS certificate in Form 16B is required to be issued by the Buyer of property to the Seller, in respect of the taxes deducted and deposited into the Government Account.

Non-resident seller – Section 195

Under the India Income-Tax law, if the seller qualifies as non-resident in India during the relevant financial year, the buyer is required to deduct tax at source (TDS) at specified rate (plus surcharge and cess) on taxable capital gain on sale of immovable property. **The specified rate currently is 20% (plus surcharge and cess) in case of long-term capital gain and 30% in case of short-term capital gain.**

Buyer should first obtain TAN under S.203A of the Act before deducting TDS. The TDS must be deducted at the time of making the payment to the NRI and details about the TDS being deducted and rate of deducted ought to be mentioned in the sale deed.

Exemptions under S.54, S. 54F and S.54EC of the Act are available for the NRI. Therefore, an NRI can take benefit of the exemptions from capital gains at the time of filing a return and claim a refund of TDS deducted on Capital Gains.

Note that, in certain scenarios, say, where the NRI’s total income is below the taxable limit or the NRI intends to claim the CG exemption, the NRI seller is entitled to make an application under S.195(3) (or the buyer under S.195(2)) to the Department for Nil / lower rate of deduction of tax and obtain a Certificate for deduction at lower rate u/S.197 of the Act.