

Sale of

# IMMOVABLE PROPERTY

by a

## NON-RESIDENT -TDS at a Glance



**Income Tax Department**

[www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)



**Income Tax needs to be deducted at source by the purchaser on payment against purchase of an immovable property from a non-resident following the guideline as below:**

### 1. Who is a non-resident under Income Tax Act?

**Ans.** The residential status is determined for every financial year, i.e., the period from 1st April to 31st March of the next year.

An individual is considered a resident if he satisfies either of the two following conditions.

- He has been in India for a period of 182 days or more during the previous financial year. OR
- He has been in India for a period of 60 days or more during the previous financial year and has been in India for 365 days or more during the four years immediately preceding the previous financial years otherwise he will be classified as a 'Non-Resident'.

**The second condition above is not applicable in the following cases:**

- Citizens of India or PIOs who, being outside India, comes on a visit to India, during a previous year.
- Citizens of India who leaves India during a previous year for the purposes of employment outside India.
- Citizen of India being members of a crew of an Indian ship.

Thus, in these cases, an individual will become non-resident if he has not been in India for a period of 182 days or more during the previous financial year.

### 2. Who is responsible to deduct income tax?

**Ans.** Any person, being a transferee/purchaser, who pays to a non-resident seller/transferor for transfer of any immovable property.



**3. When to deduct tax at source in such case?**

**Ans.** At the time of credit or payment to the seller/transferor whichever is earlier.

**4. What is the rate of deduction?**

**Ans.** The buyer/transferee has to deduct tax on sale/transfer of immovable property by the non-resident at the rate of 20% plus surcharge & cess in case property is sold/transferred by non-resident after 3 years of its purchase and at the rate of 30% plus surcharge & cess in case the property is sold/transfer within three years or less of purchase by the non-resident seller/transferor.

**5. How to deposit tax deducted in Government A/c?**

**Ans.** Tax so deducted needs to be deposited by the buyer in Central Government A/c on or before 30th April where such consideration is credited or paid in the month of March; Otherwise within 7 days from the end of the month of deduction.

**6. How the deductor (buyer) will furnish TDS statement to the Income Tax Department?**

**Ans.** After depositing such TDS, the buyer is also required to furnish the online Quarterly TDS Statement in Form 27Q. The due dates for filing such Quarterly TDS statement have been summarised below:

Sl. No.	Date of ending of quarter of F.Y.	Due date for filing TDS Statement in Form 27Q
1	30th June	31st July of the F.Y.
2	30th September	31st October of the F.Y.
3	31st December	31st January of the F.Y.
4	31st March	31st May of the F.Y.

**7. How the TDS Certificate is to be issued to the deductee?**

**Ans.** The Buyer is required to provide TDS certificate to the Seller in Form 16A within 15 days from the due date for furnishing the Form No.27Q TDS statement.



**8. Whether Tax Deduction Account No. (TAN) is required by the buyer?**

**Ans.** Yes, the Buyer needs to have a Tax deduction Account No. (TAN).

**9. In what situation, can a seller request the buyer to deduct tax at a rate lower than the rates mentioned above?**

**Ans.** (i) The Seller can make an application to the Assessing Officer in a Form No. 13 giving details of the proposed transaction of sale of immovable property and the computation of gain/loss from sale of such property. If the Assessing Officer is satisfied that the facts of the assessee's case justifies deduction of tax at a lower rate or no deduction of tax, as the case may be, he may issue him an appropriate Certificate.

For making such application to the Assessing Officer, it is mandatory for the Seller to have his PAN. Further, the Seller would also need to provide the TAN of the Buyer.

The Seller can provide such Certificate obtained from the Income-tax Department to the Buyer so that he can deduct tax at such lower rate or deduct no tax, in accordance with such Certificate.

(ii) The Buyer also has the option of making an application to the Assessing Officer under section 195(2) of the Act to determine the appropriate proportion of the sum payable to the non-resident seller which is chargeable to tax in India and on which he is required to deduct tax at source. In such case, the Buyer can deduct tax only on such proportion of the sum as is determined to be taxable in India by the Income Tax Department and not on the entire sum payable to the non-resident Seller.

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This brochure should not be construed as an exhaustive statement of the law. For details - reference should always be made to the relevant provisions in the Acts and the Rules.