



# TDS on Real Estate Transactions

Section 194IA of the Income Tax Act, 1961



## Extract – Section 194-IA

*1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident-transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.*

*2) No deduction under sub-section (1) shall be made where the consideration for the transfer of any immovable property is less than fifty lakh rupees.*

*Explanation:*

*"agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;*

*"immovable property" means any land (other than agricultural land) or any building or part of a building.*

# *Any person responsible for paying*

Co-owner vis-à-vis minimum threshold

Housing Finance pays directly / On auction / to agency via DRT order

Exempt or Nil taxable income such as:

- Sec. 47 – not a taxable transfer
- Sec. 54/54EC/54F – exemption to capital gain
- Depreciable asset (existing block) – not a taxable transfer
- Losses – business losses or capital losses – setting off provisions

Even to a relative resident-transferor

Short term or long term

Stock or business asset or capital asset

Other than person in 194LA – compulsory acquisition \*\*

# *Any sum by way of consideration (= / > 50L)*

Part payment in transition

Part payment in transition vis-à-vis threshold of 50L

Part payment but not in the year of transfer (advance payment) (s. 2(47) not satisfied)

Forfeited advance / Damages (on relinquishment of land)

Consideration in kind (any sums or any other mode) (Exchange, Redevelopment, Mortgage)

Inadequate consideration [56(2)(vii)]

No consideration [50B, 45(3) or 45(4), Co-owner with spouse]

No transfer [47, family arrangement, nominee]

Deemed consideration [50C, 43CA, etc.]

Water deposits and earmarked space for car parking

# *For transfer of any immovable property*

Divisible assets vis-à-vis threshold

Agricultural land means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2

Immovable property means any land or any building or part of a building

- Section 54D “capital asset being land or building or any right in land or building”
- Section 2(14) read with sec. 269UA(d) - immovable property means “any rights in land or building or part thereof”
- Section 194LA – immovable property means “any land or any building or part of a building”
- Shares of a company or co-operative society
  - *Bhoruka Engineering Inds. Ltd.* (36 taxmann.com 82) (HC Kar) (2013)
  - *Irfan Abdul Kader Fazlani* (56 SOT 12) (ITAT Mum) (2013)
- Development Agreements [taxable transfer]
  - *Akhtar Hussain* (140 TTJ 413) (ITAT Mum) (2011)
  - *Chiranjeevlal Khanna* (ITA 6170/M/2008) (ITAT Mum) (2011)

## *For transfer of any immovable property*

- Sale or Loading of TDR [not taxable transfer]
  - TDR detached from originating reserved land and utilized for receiving land
  - Prem Rattan Gupta (ITA 5803/M/2009) (2012)
  - Incentive FSI available due to redevelopment of dilapidated building or for slums – not transfer of land and building
  - Jethalal D. Mehta (2 SOT 422) (ITAT Mum) (2005)
  - Maheshwar Prakash – 2 Co-op Housing Soc. (313 ITR(AT) 103) (ITAT Mum) (2009)
  - Lotia Court Co-op. Hsg. Soc. Ltd. (12 DTR (Mumbai) (Trib) 396) (2008)
  - Land Breeze Co-op Housing Society Ltd. (55 SOT 103) (ITAT Mum) (2013)

# *For transfer of any immovable property*

- Lease hold right
  - Lease hold rights for 99 years in land and building cannot be equated with 'land and building'
  - Atul G. Puranik 132 ITD 499 (ITAT Mum) (2011)
  - Tejinder Singh (ITA 1459/Kol/2011) (2012)
  - Shavo Norgren (P) Ltd (58 SOT 23) (ITAT Mum) (2013) – development rights transferred along with assignment of lease hold rights. Taxable transfer
  - Navi Mumbai SEZ P. Ltd. 38 taxmann.com 218 (ITAT Mum) (2013)
- Tenancy rights
  - Kishori Sharad Giatonde (ITA 1561/M/09) (2009)
- Booking rights
  - Yasin Moosa Godil 72 DTR 167 (ITAT Ahm) (2012)

## *Shall deduct @ 1% on gross payments*

Gross amount excluding deposits

At the credit to seller's account or payment whichever is earlier

Service tax and VAT – gross amount – threshold limit

Sec. 206AA – 20%

Mismatch in accounting principle

Low or Nil TDS certificate

No disallowance on default (Section 40(a))

No TAN – pay within 7d of EOM with Form 26QB – TDS certificate issued in form 16B (15d)



THANK YOU