

# TDS Rate Chart

## Tds Rate chart applicable for Financial Year 2017-18

S.no	Section	Nature of Income	Amount over which TDS to be deducted	Rate of TDS	
				If PAN is available	If PAN is not available
1	192	Salary	to be seen as per slab	Average Rate	30%
2	192A	Payment of accumulated balance due of Employees' Provident Fund	if accumulated balance is more than 50000	10%	30%
3	193	Interest on securities	10,000	10%	20%
4	194	Dividend other than of 115-O	2,500	10%	20%
5	194A	Interest other than interest on securities			
		- Interest received from Bank	10,000	10%	20%
		- Interest received from others	5,000		
6	194B	Income by way of winnings from lotteries puzzles	10,000	30%	
7	194BB	Income by way of winnings horse race	10,000	30%	30%
8	194C	Payment to contractors/Subcontractors	30000 one time	individual/HUF 1% Others 2%	20%
			75000 in whole year		
9	194D	Insurance Commission	15,000	5%	20%
10	194DA	payment under Life Insurance Policy	100,000	1%	20%
11	194E	Payment to NR Sports Person	No Limit	20%	20%
12	194EE	Payment from National Savings Scheme	2,500	10%	20%
13	194F	Payments on account of repurchase of units by Mutual Fund	No Limit	20%	
14	194G	Commission on sale of lottery tickets	15,000	5%	20%
15	194H	Payment of Commission or Brokerage	15,000	5%	20%
16	194-I	Payment of rent			
		- For Land, building or furniture.	180,000	10%	20%
		- For plant and machinery or equipment		2%	
17	194 IA	Payment on transfer of certain immovable property other than agricultural land	5,000,000	1%	20%
18	194 IB	Payment of rent by individual/HUF other than those covered under 44AB	50000 p.m	5%	
19	194 iC	Payment of Consideration (not being in kind) under Joint Development Agreement	No Limit	10%	
20	194J	Fees for professional or technical services			
		- Normally in all cases	30,000	10%	20%
		- person engaged only in the business of operation of call center (w.e.f 01/06/2017)		2%	
21	194K	Income in respect of Units	Omitted w.e.f 01.06.2016		
22	194L	Payment of Compensation on acquisition of Capital Asset	Omitted w.e.f 01.06.2016		
23	194LA	Payment of compensation on acquisition of certain immovable property	250,000	10%	20%
24	194LB	Income by way of interest from infrastructure debt fund to a non resident or Foreign Co.	No Limit	5%	20%
25	194LBA	Certain income from units of a business trust			
		- Payment to resident	No Limit	10%	20%
		- Payment to Non-resident		5%	20%
26	194LBB	Income in respect of units of investment fund			
		- Payment to resident	No Limit	10%	20%
		- Payment to Non-resident		30%	
27	194LBC	Income in respect of investment in securitization trust			
		- Payment to individual/HUF	No Limit	25%	
		- Payment to Others		30%	
28	194LC	Income by way of interest from Indian company	No Limit	5%	
29	194LD	Income by way of interest on certain bonds and Government securities	No Limit	5%	

# TDS ON PROPERTY

## **Background of Section 1941A**

### **Memorandum explaining the provisions of Finance Act, 2013 stated that :**

- Provisions of Section 139A of the Act r/w Rule 114B requires assessee to quote PAN in documents pertaining to purchase or sale of immovable properties for value of Rs. 5 Lakh or more and information is to be furnished to the department in AIR by Registrar or Sub-registrar in terms of Section 285BA of the Act r/w Rule 1 14E in respect of transactions of Rs. 30 Lakh or more, but either PAN number is not quoted or invalid PAN is quoted in the documents.
- ITax is required to be deducted by the transferee in respect of transfer by a non-resident.
- Tax is required to be deducted in case of Compulsory acquisition of immovable properties. In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time provisions of Section 1941A were inserted.

### **Section 1941A**

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 an immovable property is less than fifty Lakh rupees.
3. The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

### **Explanation For the purposes of this section,**

- a) "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;
- b) "Immovable property" means any land (other than agricultural land) or any building or part of a building.

### **Analysis**

1. "Any person" would mean as defined in Section 2(31) i.e. Individual, H UF, Company, Firm, AOP, B OI, Local Authority or Artificial/Juridical Person. However, government is not covered.

2. "responsible for paying (Other than the person referred to in section 194LA)" -Section 194 LA provides for deduction of tax at source @ 10% on amount of compensation or enhanced compensation of account of compulsory acquisition under any law of any immovable property
- 3. "To a resident transferor"**
4. In case of Non-residents, provisions of Section 195 apply. Tax in their cases is required to be deducted @ 20% on the amount of Capital Gain.
5. "Any sum byway of consideration" i.e the money payable for the transfer by the transferee to transferor
6. "For transfer" transfer would mean as defined in Section 2(47) of the Act.
7. "Of any immovable property" means any land or any building or part of a building.
8. "(Other than agricultural land)" \_ Agricultural land is as defined in Section 2(14) of the Act and has been excluded for the reason that Capital Gain thereon is exempt from tax.
9. "At the time of credit of such sum to the account of the transferor or at the time of payment of such sum
10. "In cash or by issue of a cheque or draft or by any other mode".
11. "Deduct an amount equal to one per cent of such sum as income tax thereon.
12. " Deduction to be made where the consideration for the transfer of an immovable property is Rs, 50 lakh or more.
13. The provisions of section 203A shall not apply and accordingly, deductor is not required to obtain.

### **Comparison to provisions of Section 194LAA**

Vide Finance Bill, 2012 Section 194LAA of the Act was proposed to be inserted for providing deduction of tax at source from consideration for transfer of immovable property similar to the provisions of Section 194 IA of the Act. Same was, however, withdrawn considering practical difficulties. The provisions of Section 194IA however have been inserted Vide Finance Act, 2013 with following differences:

- a) Section 194LAA provided for deduction of Tax at source on consideration of Rs. 50 lakh or more in specified cities and on consideration of Rs. 20 lakh or more in other cities;
- b) Deemed consideration on the basis of notified rates was to be considered for the purpose of deduction also.
- c) No registering authority shall register the document, unless the transferee furnished the proof of deduction of income tax and credit thereof to the Government.

## Issues in Compliance to provisions of Section 194IA

Sl. No.	Issue	Possible View
1.	Whether provision will apply on transfer of booking/right in the builder's project?	Since the Section provides for TDS on consideration for transfer of immovable property, provisions will not apply on transfer of booking or right in the builder's project, since booking cannot be said to be immovable property.
2.	Whether limit of Rs. 50 lakh is to be determined with reference to consideration, to be paid after 1-6-2013 or on the basis of total consideration including payments made before the above date?	In view of language of Section 194-IA total consideration for transfer of immovable property is to be considered.
3.	Whether tax is to be deducted only on the payments made after 1-6-2013 or also on the payments made prior to the above date?	Since as per this Section tax is to be deducted at the time of credit or payment, same will be deductible only on payments made after 1-6-2013.
4.	Whether limit of Rs. 50 lakh is w.r.t. each joint transferor or with reference to immovable property?	As per the section the limit is w.r.t. transfer of an immovable property. Accordingly, section will apply even if property is transferred by two or more joint transferors. In case, however, there are independent rights of transferors in the property and same are transferred by transferors through separate transactions, limit will apply w.r.t. each transfer.
5.	Whether the limit of Rs. 50 lakh is applicable in case of joint transferees w.r.t. each transferee or w.r.t. immovable property?	As per the section the limit is w.r.t. transfer of an immovable property. Accordingly, section will apply even if there are two or more joint transferees. In case however there are independent transactions of transfer to two or more transferees, limit will apply w.r.t. each transfer.
6.	Whether in order to determine the threshold limit Service tax and VAT is to be included and whether tax is also to be deducted on the amount of Service tax and VAT?	On a reasonable interpretation of the section Service tax and VAT should not be considered as part of consideration and tax thereon should not be deducted. There can however, be a difference of opinion.
7.	Whether other payments to be made to the builder like EDC, Electricity line laying charges and other incidental charges will be covered as part of consideration and tax is to be deducted thereon?	Since all these payments will also be in the nature of consideration for transfer of property for the buyer, TDS thereon should be deducted. However, there can be difference of opinion in this regard also.
8.	Whether tax will be deductible on payments made to the builder on account of maintenance deposit, club security deposit, car parking etc.?	Tax is deductible on payment of consideration for transfer of immovable property. Accordingly, car parking charges will be covered as same are part of consideration for transfer of immovable property but, deposits, may be for maintenance, club or for any other purpose will not be subject to TDS.
9.	Whether the tax is to be deducted on transfer of property located outside India?	The Section will apply when the transferor as well as transferee are residents. Therefore, tax is to deducted even in respect of transfer of property located outside India. Tax is to be deducted also for the reason that income of the transferor will be chargeable in India, being resident.
10.	Whether the provisions will apply in case of exchange of property or on payment of	The section provides for deduction of tax at source where any sum is paid by way of consideration for transfer of any

	consideration by way of kind?	immovable property. On strict interpretation it can be said that tax is deductible only when payment of a sum is made either by way of cash, cheque or draft or by any other mode and the provision will not apply in case of exchange or payment of consideration in kind. Held in the case of Chief Accounts Officer Bruhat Bangalore Mahanagar Palike v. ITO (2015) 113 DTR (Bang)(Trib) 209; ITA Nos.719 & 720 /Bang/2014 decided on 14.11.2014 in the context of Section 194LA that “where neither there is quantification of the sum payable in terms of money nor actual payment in monetary terms, it would be unfair to burden a person with the obligation of deducting tax at source and exposing him to the consequences of such default.”
11.	Whether provision will apply in case of transfer of Share in a society resulting in transfer of rights in the property?	On reasonable interpretation of the provision, it should apply on transfer of share in the society for the reason that transfer of share would effectively result in transfer of immovable property.
12.	Whether provisions will apply to development contracts with the developer?	Subject to answer given in Issue No. 10 above, in case of development contracts, generally, developer transfers a part of built up area to the land owner in exchange of transfer of proportionate land rights. Accordingly, land owner and also developer are the buyers as well as sellers and therefore, both are required to deduct tax at source under the section. In respect of further sale made by developer, buyers will deduct tax on consideration paid to developer.
13.	In case of development contracts, at what stage tax is required to be deducted by the developer as well as land owner?	It is a controversial issue in case of development contracts that at what stage transfer takes place; whether at the stage entering into the agreement and handing over the possession of land to the developer or when property is built up and possession of the built up area is given to the land owner. Tax will be deductible when transfer takes place and/or when consideration is deemed to be paid.
14.	Whether the provision will apply when payment is directly made by bank or a finance company to the seller on behalf of the transferee?	Provisions will apply even when payment made on behalf of the transferee by the bank or a finance company and the transferee has to ensure deduction of tax at source from that payment also.
15.	Whether the provision will apply in case of long-term lease agreements where lump sum premium is paid? How the distinction will be made between long-term lease or short-term lease, say lease is for 2 years or 10 years or 25 years or 99 years?	Provisions will be applicable considering the facts of the case, terms of the agreement and intention of the parties. Generally in case of long-term leases intention of the parties is to transfer substantially the rights in the immovable property and therefore, tax should be deductible in this section. In case of short-term lease however tax is deductible under Section 194-I.
16.	Whether by covering lease agreements under this provision, tax can be deducted at 1% on premium payment instead of 10% under Section 194-I?	As mentioned in issue No. 15 hereinabove, in case of short-term lease, tax should be deductible under Section 194-I and if the intention is to transfer the immovable property, tax should be deducted under Section 194-IA.
17.	Whether purchase of property in auction by a bank or financial institution pursuant to default in payment of loan by the owner of the property will be subject to TDS under Section 194IA?	In such cases, sale by the bank or financial institutions will be on behalf of the defaulter and the defaulter is the transferor. In fact, the defaulter will be liable to pay capital gain tax on sale of the property. Therefore the provisions will be applicable and transferee has to deduct tax and deposit the same by giving the

		details of the transferor.
18.	Whether tax is deductible w.r.t. deemed consideration under Section 50C of the Act or on actual consideration if same is less than the deemed consideration?	As per provisions of Section 194IA tax is to be deducted on consideration paid by the transferee to the transferor. Accordingly, deemed consideration mentioned under Section 50C is not relevant. This position is also clear in view of the language of earlier Section 194LAA, which had specific provisions in this regard.
19.	Whether tax can be deducted in subsequent payments if the transferee has defaulted in deducting tax in earlier payment?	Yes, the tax should be deducted in subsequent payments if it has not been deducted in earlier payments.

### **Procedural requirements and consequences of non-compliance**

- As per Section 194IA tax is required to be deducted at 1%. In case, however, transferor does not have PAN, provision 206AA will be attracted and the transferee will be liable to deduct tax at source @ 20%.
- Transferee on deduction of tax has to furnish particulars to the department in Form No. 26QB. The statement is to be submitted within 7 days from end of the month in which tax has been deducted;
- The transferee has to print out TDS Certificate in Form No. 16B from the site of the department and is to be provided to the transferor within a period of 15 days from the due date for furnishing the statement in Form No. 26QB.
- In case tax is not deducted by the transferee consequences for non deduction will be as in case of any other defaulter and the transferee will be liable to pay tax, interest and also penalty under Ss. 201, 221 and 271C of the Act.

### **Conclusion**

The new law will definitely keep a proper track on all high value property transactions in the country and will give the taxing authorities the details in a systematic way. There are, however, controversial issues in compliance of the provision by the transferee, as discussed above, which need to be clarified at the earliest to avoid litigation. For property buyers, the newly inserted section puts additional compliance burden, which they have to comply strictly to avoid penal consequences. Further, in most of the cases, buyers/ transferees are not acquainted with provisions of Income Tax Act and the procedural compliances and therefore, compliance of the provisions results in undue burden and botheration to them. Hence, concept of TDS provisions is a painful exercise for real estate buyers. Only the taxing authorities are the gainer and they have been able to pass on their own responsibility of levying and collecting tax from Capital gain earners.