

Purchase of immovable Property from Non Resident Indian - provisions under Chapter XVII of the Income Tax Act 1961 with regard to Tax Deduction at Source.

The broad guidelines are given below:

Section 195

Any person responsible for paying to a Non-Resident, not being a company or to a foreign company, of any interest or **any other sum chargeable under the provisions of this Act** (not being income chargeable under the head salaries) shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, **deduct income-tax thereon at the rates in force:**

Selling of immovable property by a Non Resident Indian is taxable under the income tax under Chapter XII-A of the Income Tax Act, more specifically under section 115E of the Income Tax Act 1961. The rate of tax **prescribed and in force is twenty per cent.**

Tax should be deducted by the payer at the **rate in force or any lesser rate** as certified by the Assessing Officer in a Certificate issued by him.

The application for the deduction at lesser rate of tax can be made either by the payer or the recipient in the prescribed forms to the Assessing Officer with the necessary documents.

If the Non Resident Indian does not have Permanent Account Number, the rate of tax will be 20%, irrespective of any certificate issued by the Assessing Officer.

The purchaser should have his Permanent Account Number (PAN) before he enters into any such transactions.

The purchaser before deducting income tax from such payment, should apply for and get a Tax deduction Account Number (TAN) as per section 203A of the Income Tax Act 1961.

The purchaser should collect the Permanent Account Number (PAN) of the said Non resident Indian before deducting the tax.

The purchaser should deposit, (by using challan for payment of TDS), the income tax so deducted, with the government (through banks authorized to collect direct taxes) within seven days from the end of the month in which such tax is deducted.

The purchase should file the TDS returns electronically, within the due dates as applicable (as provided below) giving the details of the Non Resident India, his address, PAN etc.

Due dates for filing quarterly TDS Returns (To be submitted in the Form No.27Q.)

For the quarter ending June 30	July 15
For the quarter ending September 30	October 15
For the quarter ending December 31	January 15
For the quarter ending March 31	May 15

The purchaser at the time of preparation of quarterly statement of TDS shall –

- Quote his TAN
- Quote his PAN
- Quote PAN of the Non Resident Indian etc.,

The purchaser after filing the TDS returns electronically, shall issue the Certificate of Deduction of Tax in Form 16A to the said Non resident Indian, within 15 days from the due date of furnishing quarterly TDS returns.

If the purchaser fails to deduct or fails to pay the amount deducted will be treated as **Assessee in Default** as per section 201 of the Income Tax Act, 1961 and will be liable for payment of interest, penalties and prosecution.

Penalties for default

For not obtaining the Tax Deduction Account Number a penalty of Rs.10,000/- can be levied under section 272 BB (1) of the Income Tax Act 1961.

For non quoting of the TAN, a penalty of Rs.10,000/- can be levied under section 272 BB (1A) of the Income Tax Act 1961.

For non quoting of the PAN, a penalty of Rs.10,000/- can be levied under section 272 B(2) of the Income Tax Act 1961.

Failure to deduct whole or any part of the tax as required to be deducted, a penalty equal to the tax sought to be deducted and not so deducted can be levied under section 271 C of the Income Tax Act 1961.

Failure to file the quarterly TDS returns a penalty of Rs.100/- per day for every day during which the failure continues can be levied under section 272A(2).

Failure to issue the Certificate of Deduction of Tax at Source, a penalty of Rs.100/- per day for every day during which the failure continues can be levied under section 272A(2).

If the assessing officer is satisfied that the purchaser had not paid the tax deducted at source without any reasonable cause, a penalty to the maximum of the amount equal to the tax deducted at source can be levied under section 221 of the Income Tax Act 1961.

Mandatory interest payable under section 201(1A) of the Income Tax Act 1961.

If the tax is not deducted the assessee in default is liable to pay interest @ 1% p.m from the month in which the tax is sought to be deducted till the month in which such tax is deducted.

If the tax deducted is not paid within the due dates, the assessee in default is liable to pay interest @ 1.50% p.m from the month in which the tax is deducted till the month in which such tax deducted is paid..

If the tax deducted at source and the interest, penalty etc are not paid the same can be recovered by the Government from the purchaser by attaching the moveable, immoveable property, attaching the salary & other receivables etc under Section. 222 and 226 of the Income tax Act 1961.

Prosecution:

Failure to pay the tax deducted to the government as per the law can attract punishment of rigorous imprisonment of not less than three months but which may extend upto seven years and also a fine which may be decided by the Court as per section 276B of the Income Tax Act 1961.