

**FSIA E-circular dt. 17.6.2013**  
**( TDS on Purchase of Property )**

**Faridabad Small Industries Association**

*The face of Modern Indian MSMEs*

[www.fsiaindia.com](http://www.fsiaindia.com) FSIA Park , Opp. Plot No.23, Sector-24, Faridabad- 121005, Haryana , India

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**Integrated Association of Micro, Small & Medium Enterprises of India**

[www.iamsmeofindia.co.in](http://www.iamsmeofindia.co.in)

E-mail: [fsiaindia@gmail.com](mailto:fsiaindia@gmail.com), [info@iamsmeofindia.co.in](mailto:info@iamsmeofindia.co.in) +91-9711123111 (Executive Secretary);



Dear FSIA Members,

**Do you know that if you are a Buying a Property, You have to deduct TDS**  
**(( and if you sell a property, → The buyer will deduct your TDS ))**



**Short Summary**

- This is a new Section 194-IA w.e.f. 1.6.2013.
- This is applicable for purchase of immovable property only , i.e. Land, and House Property
- Minimum Exemption = Rs 50 lakhs
- TAN is not compulsory
- Three categories of properties covered – Industrial, Residential and Commercial .
- Agricultural Land is excluded

Note : This similar provision was brought in last year, but was dropped. This year again it was brought in in a liquefied form, and has been promulgated.

It is already in place and Bank onsite Tax payment websites have already been updated. ( ex : PNB, ICICI )

**Responsibility to Deduct, Pay and Comply :-**

Responsibility is of the Buyer of property, one who is buying and paying to a vendor.



**HOW MUCH DEDUCTION:-**

1% of total purchase consideration

**No TDS number required**

As a relief to the small / first timers, TAN is not required.

Usually complying with the requirements for the tax deduction at source involves getting the tax deduction at source number (TAN) which is like a PAN for those who are actually deducting the tax. The tax that has been deducted has to be deposited within the specified time and then a return has to be filed.

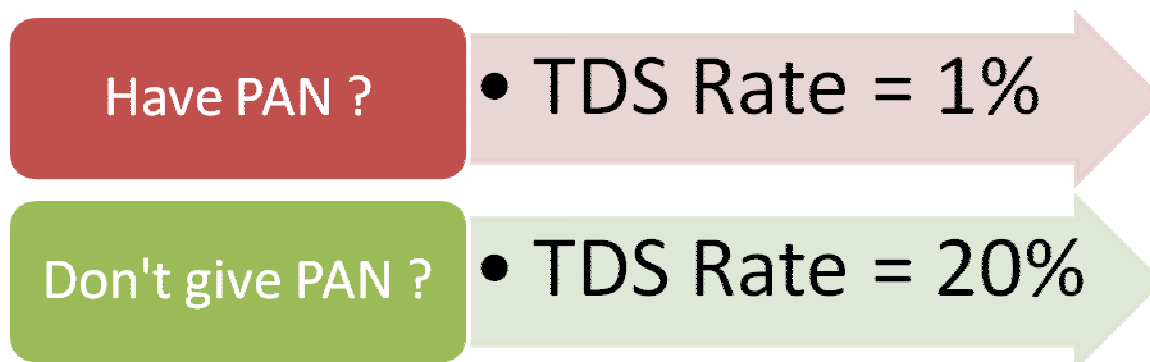
However, In this case there is an online form for making the TDS payment. Details required for the form will include the PAN of both the parties, their addresses along with the address of the property and the amount of the tax.

In this case there would be a situation wherein the TDS could be a one time action because there will be people who are not normally covered under these provisions but they have to make the deduction for this purpose.

The requirement for TAN has been done away with and even the return filing process has been simplified so this should provide some relief for the individual.

**TDS could be a big 20%, if PAN is missing**

Government is of an opinion, that sometimes people don't declare the profits they make on sale and purchase of property. So, here PAN is being compulsorily asked for. And there is a big deterrent of not giving the PAN in future, as show below.



### Source

[http://law.incometaxindia.gov.in/DITTaxmann/Notifications/IncomeTaxAct/2010/NOTIF39\\_2013.pdf](http://law.incometaxindia.gov.in/DITTaxmann/Notifications/IncomeTaxAct/2010/NOTIF39_2013.pdf)

### Time limit to pay to the Government

Has to be paid within 7 days of the next month. Else the interest for delayed payment starts

### Format for Return ?

There is no separate return for this.

There is one single, return cum challan, in Form 26QB

### Mode of payment of this tax ?

This is compulsorily “online”, except in some exceptions

### Issue of TDS Certificate ?

New Format released = Called **Form 16B**.

This is compulsorily done within 15 days, of due date of deposit of TDS. That is by 22<sup>nd</sup> day of next month

And this is not to be made Manually, or in Excel etc

It has to be downloaded from the Govt’s web-portal for this purpose.



### What about purchase of Property from a “Builder”

Such tax would have to be deducted irrespective of who the seller is, whether a builder or a flat owner making a subsequent sale. So, even if you pay to BPTP, Omaxe, Parshvanath, JP, etc etc, you have to deduct this TDS. (( Tricky !!! but true ))

### Payment in 1 instalment, or monthly ??? ( in case of purchase of Property from a “Builder” on instalments )

Tax has to be deducted either at **the time of credit or payment of consideration, whichever is earlier**. Normally, in cases of individuals purchasing immovable property, the question of credit of consideration in the books of account should not arise, as there would be no books of account maintained for such transactions. Therefore, effectively TDS would be required to be deducted at the time of payment. Such TDS would be deducted from the consideration being paid to the seller and have to be paid separately to the government by the purchaser.

And since you pay say every Month / Quarter / year based on construction linked Payment plan, you have to pay this tax suo-moto with every instalment.

### What about the past payments, now becoming due

This provision would only apply to payments being made on or after 1 June 2013, and would not apply to payments made for the same property prior to 1 June 2013, when the relevant law was not in force. However, for the purposes of computation of the limit of Rs.50 lakh, the total consideration, whether paid before 1 June 2013 or subsequently, would have to be considered. Therefore, for a property agreed to be purchased for Rs.125 lakh, if payments of Rs.100 lakh have been made before 1 June 2013, even if

the payments being made after 1 June 2013 are less than Rs.50 lakh, TDS would have to be deducted from the payments of Rs.30 lakh as and when such payments are made.

### **What about the "Joint Sellers/ Joint Buyers" ?**

3 cases are envisaged

#### Case 1 : single seller selling single property to multiple buyers- Joint Holders

A single seller selling single property to multiple buyers. In this case there should be no exemption as the sale deed would attract the registrable value (stamp duty) at full consideration.

#### Case 2 : Single seller selling property in parts to multiple Buyers, each with separate sale deed

In this case a single seller is selling property in parts to multiple buyers, each with separate sale deed. In this case each document being registered would have individual consideration & stamp duty. So the TDS should be applicable there only wherever it is above 50 lacs only.

#### Case 3 : \*Joint\* sellers selling Single property Single Buyer, with single sale deed

Ex : Flat being purchased is worth Rs 1 crores, and is in name of 3 joint holders. Now the joint holders claim that each one owns 33.33 lakhs worth only, and hence TDS is not applicable ?

Answer :

From the language of the law, it seems that the limit would have to be seen vis-a-vis payment being made by each purchaser to each seller, though the matter is slightly debatable, particularly as the online form has questions to be answered as to whether there is more than one transferee as well as whether there is more than one transferor and the total value of consideration. In the absence of clarity, to err on the safer side, it may be advisable to deduct TDS wherever the consideration under **a single agreement exceeds Rs.50 lakh**, irrespective of the number of transferors or transferees.

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### **What about the "Bank Funded Deals" >> Home Loans ?**

Ex : Flat being purchased is worth Rs 90 lakhs, and Rs 70 lakhs is being paid by the Bankers ( say HDFC, or State Bank of India, as the financier to the seller of flat ). Now, how TDS is to be deducted and paid ?

Answer :

Even in such cases, the bank is merely discharging the obligation of the purchaser who is responsible for making payment of the purchase price, and the **purchaser is therefore required to deduct TDS** in respect of such amount as well.

The purchaser would **therefore have to request the bank/finance company to pay the seller the loan amount net of TDS**, the purchaser would then pay the TDS to the government, and claim reimbursement of the TDS from the bank/finance company.



One more task to do !! since, that Bank will itself have to be convinced for this. ( or let the bank pay full 70 lakhs, and you pay the TDS of Rs 90000 from your Rs 20 lakhs remittance, in this above example )

### **What information is Government asking in this Challan ?**

To make the payment you will need to fill the following details: Permanent Account Number of the buyer and the seller; complete address of the buyer as well as the seller; address of the eligible immovable property; date of sale agreement and the value of the property that is for consideration.

### **What will happen to this TDS for the seller of property . Can you take credit ?**

Yes, this TDS is like any normal TDS payment. You will compute your total income as usual. And compute the tax payable. Against that, this TDS will be available to adjust. Balance if any will be payable/refundable to you as per rules.



### **MSME of India Notes**

The object of s. 194IA is indisputably to encourage employment in the organized sector. Target is to give more appointments and also to give long term employment.

However, we need to wait and watch to see if the process works.

### **For queries, suggestions and feedback , you can e-mail us**

Sangeet Kumar Gupta, FCA, DISA, ACMA, PGDMM, B.Com(Hons), Honorary Consultant, Faridabad Small Industries Association  
93126-08426, Camp Off : H No 63, Sector-15, Faridabad. FSIA Off : FSIA Park, Opp. Plot No.23, Sector- 24, Faridabad- 121005.

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### **Some Last Date Reminders : 15<sup>th</sup> June 2013 onwards**

Event Date	Act	Applicable Form	Obligation
15/06/2013	Income Tax	Challan No.ITNS-280	Payment of Advance Income Tax : Companies (15%)
15/06/2013	Providend Fund	Electronic Challan cum Return (ECR)	E-Payment of PF for May ( Cheque to be cleared by 20th)
15/06/2013	D-VAT	Form Bank-1	Return by Delhi branches of Scheduled Banks engaged in business of silver, gold etc. for the year 2012-13
21/06/2013	ESI	ESI Challan	Payment of ESI of May
21/06/2013	D-VAT	DVAT-20 & Central	Deposit of VAT & CST Tax for May
22/06/2013	D-VAT	DVAT - 43	Issue of DVAT Certificate for deduction made in May

30/06/2013	D-VAT	Form DP-1	Dvat Dealers to furnish Pan No. IEC, bank Details, Place of business, Goods sold etc. online in dealer profile
30/06/2013	D-VAT	Form Stock-1	Submit online taxwise breakup of stock for year ending 31-03-2013

### Some Last Date Reminders : July 2013

Event Date	Act	Applicable Form	Obligation
05/07/2013	Service Tax	Challan No.GAR-7	Payment of Service Tax for the month/quarter ended June
06/07/2013	Service Tax	Challan No.GAR-7	Payment of Service Tax for month/quarter ending June for assesses making E-PAYMENT
07/07/2013	Income Tax	Form No.15G, 15H,27C	Submission of Forms received in June to IT Commissioner
07/07/2013	Income Tax	Challan No.ITNS-281	Payment of TDS/TCS deducted/collected in June
15/07/2013	D-VAT	DVAT-20	Deposit of DVAT TDS for June
15/07/2013	Income Tax	Return 24Q, 26Q, 27Q & 27EQ	TDS returns for Jun Quarter for non-govt deductors & TCS Returns for ALL Deductors
15/07/2013	Providend Fund	Electronic Challan cum Return (ECR)	E-Payment of PF for June ( Cheque to be cleared by 20th)
20/07/2013	Service Tax	ER-3	Submission of return by SSI units for June quarter
21/07/2013	D-VAT	DVAT-20 & Central	Deposit of VAT & CST for the month/quarter ended June
21/07/2013	ESI	ESI Challan	Payment of ESI of June
22/07/2013	D-VAT	DVAT - 43	Issue of DVAT Certificate for deduction made in June
25/07/2013	D-VAT	Form 16 and CST 1	E- Return of VAT for month/quarter ended June
28/07/2013	D-VAT	16 & 1 & Ack	Physical Return of VAT & CST for the month/quarter ended June
28/07/2013	D-VAT	DVAT-48	Return of TDS for June quarter in DVAT-48
30/07/2013	Income Tax	Form 16A/ 27D	Issue of QuarterlyTDS/TCS certificate for June quarter.
31/07/2013	Income Tax	Form No. ITR-1,2,3,4	Filing of I.T. Returns by Individuals , HUF (without Audit)
31/07/2013	Income Tax	Form No ITR.-5	Filing of I.T. return by Firms,AOPs, BOIs (without audit)
31/07/2013	Income Tax	Form No ITR.-7	Filing of I.T. Return by Trusts, Political party etc.
31/07/2013	Company	eForm 5INV & excel file	Details of Unclaimed Amounts under Sec 205C(2) of Cos Act
31/07/2013	Wealth Tax	Form BA	Filing of wealth tax returns (without audit)

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