
NRIs – Income Tax implications on buying & selling property in India

Q 1: What are the income tax implications for selling property situated in India by NRIs?

A: Types of Capital Gains

1. **Short-Term Capital Gain (STCG):** Property held for 24 months or less.
2. **Long-Term Capital Gain (LTCG):** Property held for more than 24 months.

B: Taxation of Capital Gains

1. **STCG:** Taxed as per the individual's income tax slab with applicable surcharge and cess
2. **LTCG:**
 - ✓ **Before July 23, 2024:** Taxed at 20% with indexation benefits.
 - ✓ **On or After July 23, 2024:** Taxed at 12.5% without indexation benefit.

Applicable surcharge and cess would be extra

C: Special Option for Resident Individual

- For properties acquired before July 23, 2024, residents can choose:
 1. 20% tax with indexation, or
 2. 12.5% tax without indexation.
- This option is not available to NRIs.

Q 2: How are capital gains calculated?

1. **Formula:** Sale Price - (Purchase Cost + Improvement Cost + Transfer Expenses). In certain cases, value for stamp duty purposes can be imputed as sale price.

2. For LTCG:

- ✓ Before July 23, 2024: Purchase cost to be adjusted for inflation by providing for indexation benefit.
- ✓ On or after July 23, 2024: No indexation benefit.

Q 3: Are there any exemptions on long-term capital gains (LTCG) arising to NRIs on sale of property?

1. Section 54:

Reinvest LTCG from a residential property with cost of the new property up to INR 10cr into:

- Buying one house in India (within 1 year before or 2 years after the sale),
or
- Constructing one house in India (within 3 years of the sale).

2. Section 54EC:

Reinvest LTCG from sale of land or buildings or both into bonds issued by NHAI or REC (within 6 months, up to ₹50 lakhs)

The eligibility of these exemptions may be subject to additional conditions under tax laws.

Q 4: What are the TDS obligations which a non-resident needs to be aware of when he is selling a property?

- The buyer (regardless of his residency) is obligated to deduct TDS at the rate of 20% (plus applicable surcharge and cess) / 12.50% as the case may be on the capital gain income for LTCG and at 30% (plus applicable surcharge and cess) for STCG.
- The TDS should be deposited with the Indian tax authorities under the seller's PAN within specified time and is credited against the total tax liability of the NRI.

For this purpose, the buyer would have to obtain a Tax Deduction Account Number and also file a TDS return using Form 27Q within specified time. This requirement would be there even where the buyer is a non-resident.

- The buyer/ seller has the option to approach the tax officer and make an application for lower tax or Nil tax deduction certificate. The taxes so deducted are eligible for credit and can be offset against the final tax liability. Though, technically the buyer can do the capital gain calculation as he has all the details relating to the sale consideration, cost of acquiring the property etc., but in practice, the buyer generally insists on the seller to get a lower or Nil withholding tax certificate.

Q 5: What are the TDS obligations which a non-resident needs to be aware of when he is buying a property?

When an NRI buys property in India, the Tax Deducted at Source (TDS) obligations depend on the seller's residential status and the transaction details, as outlined in the Income Tax Act. Section 194IA specifically deals with TDS on the purchase of immovable property from resident whereas section 195 deals with TDS on purchase of immovable property from non - residents.

Section 194IA Overview: This section mandates that any buyer purchasing immovable property (excluding agricultural land) worth over ₹50 lakh from a resident seller must deduct TDS at 1% of the total consideration or stamp duty value, whichever is higher. The TDS is deducted at the time of payment or credit to the seller's account, whichever is earlier, and must be deposited within 30 days from the end of the month in which tax is deducted using Form 26QB. A TDS certificate (Form 16B) is then issued to the seller. Where the aggregate value of the property is more than ₹50 lakh and there are more than 1 buyer, the responsibility to deduct and pay taxes and file Form 26QB is of each buyer for their share.

Key TDS Obligations for an NRI Buyer:

1. If the Seller is a Resident:

- As an NRI buyer, you're still obligated to comply with Section 194IA if the seller is a resident Indian. You must deduct 1% TDS on the transaction value (including additional charges like club memberships or car parking fee or maintenance fees) if it exceeds ₹50 lakh.
- You don't need a Tax Deduction Account Number; your and the seller's PAN suffice for filing Form 26QB.
- Deposit the TDS within 30 days from the end of the month in which the deduction is made, and issue Form 16B to the seller.
- If the seller doesn't provide a PAN, TDS jumps to 20%, which could complicate things, so ensure you have their PAN upfront.

2. Practical Tips for NRI Buyers:

- Always confirm the seller's status before the transaction. A seller claiming to be a resident but qualifying as an NRI can land you in trouble if you apply Section 194IA incorrectly. The buyer's responsibility is to deduct and deposit tax.
- Keep records of the sale agreement, PAN, and payment details. For Section 195, a chartered accountant's certificate might help compute actual capital gains, avoiding over-deduction.

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