

## TDS on purchase of immovable properties – A procedural nightmare? – Mar 1, 2013



**By S Sivakumar, Advocate**

THE Finance Bill, 2013 has proposed to introduce Section 194-IA, which reads as under:

42. After section 194-I of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2013, namely:-

'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 an immovable property is less than fifty lakh rupees.

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.'

As we know, this proposal had been made in last year's Finance Bill... fortunately, this proposal was dropped when the Finance Act, 2012 was passed. Quite unfortunately, this provision has found its way back into the income tax statute.

This proposal is likely to create a lot of practical issues, some of which are discussed here..

As is known, Developers and Builders, in many parts of the country, enter into two agreements, viz. one, for the sale of the undivided portion of the undivided portion of the land and the other, for the activity of construction, which is a works contract, by the Developer/Builder. As is known, it is the sale of land that is recognized as a transfer of immovable property, requiring registration under the Stamp Acts of the States. It is not clear as to whether, TDS is to be effected on the sale value of land, as recognized under the local Stamp Act, or whether, TDS is to be effected on the total value of the money paid by the buyer of the immovable property to the seller. My personal view is that, TDS would be applicable on the entire quantum of money paid /payable by the buyer of the immovable property.

There is another major procedural issue that could surface here, given the fact that, buyers of immovable property and especially, flats, pay the selling party, viz. the Developer/Builders in installments spread over an extended period. In many typical cases, the whole activity of constructing and delivering flats could run for a few years. It would seem that, the purchaser of the flats would be required to effect TDS, every time he makes a payment to the Developer/Builder, in the cases covered by this Section.... this could be a huge procedural nightmare.

It is also not clear as to how this Section, as and when enacted, would apply in respect of transactions in respect of which, part of the purchase consideration would have been paid prior to this Section, coming into effect.

Moreover, this proposed Section, attracts TDS at the time of the credit of the amount payable to the transferor/seller or at the time of the actual payment, whichever is earlier. The requirement to effect TDS at the time the buyer/transferee credits the amount/s to the transferor/seller's account, could create a lot of practical issues, considering the fact that, most of the buyers of the immovable properties are individuals.

The Realty Sector was quite relieved to see this proposal getting dropped, at the time of the passage of the Finance Bill, 2012. This proposal, which has made a successful comeback, comes as an unpleasant development for the Realty Sector.