



Things to focus on in case you have to purchase property from an NRI

Tax compliances and calculations in property deals involving NRI sellers are more complex than in regular ones

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After a commendable fourth quarter of FY21, sales in the real estate sector again came to a standstill in the first quarter of FY22 as the country was hit by the second wave of the pandemic. However, covid cases are declining and states are lifting lockdowns; and, with it, homebuying activity is again expected to resume soon.

So, if you are planning to buy a house, especially in the secondary market, it is possible that you might find a non-resident Indian (NRI) seller who is planning to exit his or her investments.

If you are getting a good deal, you should not bother whether the seller is an NRI or a resident Indian. However, when buying a property from an NRI, you have to be extra careful as the tax compliances and calculations are much more complex when compared with buying a property from a resident Indian.

Non-compliance with the norms can get you in trouble, as the tax department may impose penalties.

Let us understand how the taxation rules in the case of such deals are different from regular transactions and other things that you need to keep in mind while buying a property from an NRI.

Deduction of TDS: While buying a property, the buyer usually must deduct tax deducted at source (TDS), and submit it to the tax department. The amount of TDS, or the rate at which TDS needs to be deducted, depends on the residency status of the seller. If you are buying a property from a resident Indian, the you need to deduct TDS at the rate of 1%, when the value of the property is equal to or



more than ₹50 lakh, while no TDS deduction is required in case the value of the property is less than ₹50 lakh.

However, in case the seller is an NRI, TDS needs to be deducted, irrespective of the value of the property. Also, the calculation is slightly complex as it needs to be calculated on capital gains rather than on the value of sale of the property.

In case of short-term capital gains (property sold within two years), TDS will have to be deducted at the rate of 30% plus surcharge besides health and education cess. In case of long-term capital gains (sold after two years), TDS will be deducted at the rate of 20% after providing for the indexation benefits.

Determining the residency status: The buyer might face issues with respect to determining the residency status of the NRI as well as TDS calculation. The seller may not disclose the residency status or may declare the status as "Resident Indian" to avoid higher TDS deduction. Also, at times, an NRI may not be sure about his/her residency status. As the onus of complying with TDS deduction rules lies with the buyer who has to rely on the information provided by the seller, the buyer has to be extra

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careful and ask for adding the indemnity clause in the contract.

"The buyer may also insist on incorporating a clause in the sale agreement on indemnification by the seller in case of TDS non-compliance

as a result of wrong or incomplete information being provided by the seller to the buyer," said Sonu Iyer, tax partner and people advisory services leader, EY India.

The indemnity clause does not mean there is no need to pay taxes. It only takes financial burden off the buyer in case any penalty has to be paid due to wrong information provided by the seller.

Also, to avoid non-compliance, buyers at times deduct TDS on the entire sale value.

Other compliances: In order to deduct TDS, the buyer has to obtain Tax Deduction Account Number (TAN) and file TDS returns within 30 days from the end of the quarter in which payment has been made. The buyer needs to get himself registered on the TRACES platform.

"If you happen to deduct the TDS without a TAN, the I-T department

may slap a penalty on you. In case property is being jointly purchased, both purchasers need to have a TAN," said Ram Naik, executive director, The Guardians Real Estate Advisor.

The buyer needs to provide TDS certificate (Form 16A) to the seller within 15 days of due date for filing the TDS returns. The buyer must ensure that the NRI seller has a Permanent Account Number (PAN) as will be needed for the purpose of deduction of TDS and filing of TDS returns.

Also, the buyer needs to be careful while making payment to the NRI seller.

"The sales deed should contain details of the account in which the amount is deposited," said Suresh Surana, founder, RSM India.

Also, in case of joint ownership of the seller, the payment has to be made into their accounts separately. If you are remitting any sales consideration outside India, then you will have to inform the tax department separately.

The resident buyer should file Form 15CA/15CB (certificate containing details of the payment made to NRI) while remitting any amount of sale consideration or rent outside India to the NRI.

The payment has to be made in the NRO (non-resident ordinary) account of the seller in case he is an NRI.

"An NRI cannot have a resident account in India as per the exchange control rules. An NRI seller can collect payment from a resident buyer in a NRO bank account. A NRI can designate his/her ordinary savings bank account as NRO by informing the relevant bank of his/her NRI status," said Iyer. Buying a house is a high value transaction. Therefore, you should be very careful and should ensure compliance norms are met