

## FSIA E-circular dt. 26-10-2013

( TDS on Purchase of Property from HSIIDC / HUDA / Govt Bodies)

### Faridabad Small Industries Association

*The face of Modern Indian MSMEs*

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Dear FSIA Members,

Matter is important

Many of you have been allotted the Plots from HSIIDC at the IMT Faridabad

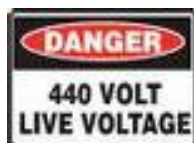
Many more have purchased properties / flats from Builders like BPTP, Ansal, Omaxe, DLF and so on.



Question 1 : Are you deducting TDS ?

Question 2 : Are you deducting and depositing TDS every month / with every installment to HSIIDC ?

**If you have not deducted TDS of HSIIDC / BPTP / etc, then  
you are playing with DANGER**



## 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 which started 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

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

Responsibility is of the Buyer of property, one who is buying and paying to a vendor. Note : for IMT, the HSIIDC is the vendor.



### HOW MUCH DEDUCTION:-

1% of total purchase consideration

### 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



**No Exemption for any vendor, not even HSIIDC, or HUDA, or DDA ...**

### This is the verbatim text of the Law

**“quote >>>**

*‘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.*

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

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.’.

#### ..... UnQuote >>>

The only exception is section 194LA = and that is pertaining to compulsory acquisition of land. Hence that is not applicable in our cases. Section 203A is regarding the TAN number registration again not relevant for this point.

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### Moral of the story so far

So, if you have purchased a Plot from HSIIDC. You must deduct TDS

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### Can I do this in one go, when the property is registered in my name ?

As per Section 194IA, TDS is to be deducted at the time of payment. The date of transfer is not relevant as TDS is not required to be deducted at the time of transfer but is required to be deducted at the time of payment.

Therefore, irrespective of the date of transfer, the TDS is required to be deducted at the time of payment. So even if advance payment is being made, TDS would be required to be deducted. Moreover, in case the payment is being made in Installments to the Seller, the TDS would be deducted at the time of paying each installment.

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### I did not deduct TDS and paid full instalment to HSIIDC / DLF / BPTP Is there any penalty ?

Yes, of course

*Section 271C says*

*If any person fails to— (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; ..... then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.]*



So,

In simple words

If the HSIIDC installment was for Rs 1 crore

Your TDS should have been 1 lakh

And if you did not do

Now, please deposit it from your own pocket + interest + penalty upto Rs 1 lakh



## Any chances of prosecution ?

Law says

*[Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.*

*276B. If a person fails to pay to the credit of the Central Government,—*

*(a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or*

*.....*

*.....*

*he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.]*

So, that could be a bad news.

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## Moral of the story so far– Part 2

And if you have not deducted in past,

# DO IT NOW

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.

next

**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 )

**MSME of India Notes**

The object of s. 194IA is indisputably to encourage more income tax collection. But, deducting from payment of Government owned bodies, like HSIIDC is going a bit too far. But that is what the law is, as of date.

Usually, people forget this.

And then may end up paying the Interest and penalties for defaults.



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

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**Some Last Date Reminders : October 2013 – last 5 days**

Event Date	Act	Applicable Form	Obligation
25/10/2013	Service Tax	Return No.ST-3	Filing of Half Yearly Service Tax return. ( April to September)

30/10/2013	Company	Form no 23 AC & 23 ACA	Balance Sheet in XBRL format
30/10/2013	Company	Form no 23 AC & 23 ACA	Balance Sheet in Non XBRL format
30/10/2013	Income Tax	Form 16A/ 27D	Issue of QuarterlyTDS/TCS certificate for Sep quarter
31/10/2013	Income Tax	Form 3CD, 3CA/3CB	Online filing of tax audit report for those Assesseees who has filed their Report manually by 30th September, 2013
31/10/2013	Income Tax	Form No. ITR-1,2,3,4,5	Filing of I.T. Returns by Individuals , HUF, firms, AOP, BOI (without Audit) for Uttarakhand Assesseees
31/10/2013	Income Tax	Form No. ITR-1,2,3,4,5	All income tax - tax audit cases, return date was extended till 31.10.2013 ( due to High Court of Delhi Directions )

### Some Last Date Reminders : November 2013 onwards

Event Date	Act	Applicable Form	Obligation
05/11/2013	Service Tax	Challan No.GAR-7	Payment of Service Tax for Oct by Companies
06/11/2013	Service Tax	Challan No.GAR-7	Payment of Service Tax for month ending Oct for corporate assesseees making E-PAYMENT
07/11/2013	Income Tax	Challan No.ITNS-281	Payment of TDS/TCS deducted/collected in Oct
07/11/2013	Income Tax	Form No.15G, 15H,27C	Submission of Forms received in Oct to IT Commissioner
10/11/2013	Excise	ER-1	Return for Non SSI assesseees for Oct
10/11/2013	Excise	ER-2	Return for EOUs for Oct
10/11/2013	Excise	ER-6	Return by units paying duty > 1 crore (CENVAT + PLA) for Oct
15/11/2013	Income Tax	Form 16A/ 27D	Issue of QuarterlyTDS/TCS certificate for Sep quarter for Govt. deductors.
15/11/2013	Providend Fund	Electronic Challan cum Return (ECR)	E-Payment of PF for Oct ( Cheque to be cleared by 20th)
21/11/2013	ESI	ESI Challan	Payment of ESI of Oct
30/11/2013	Excise	ER-4	Annual Return by units paying duty more than Rs 1 crore (CENVAT + PLA)