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SITG No. 259

**Key considerations while
leasing property from a
Non-Resident Indian
(NRI)**

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Introduction

- ❖ It is not uncommon for Indian residents to enter into **rental arrangements** for properties **situated in India**, particularly when the property is owned by a Non-Resident Indian (NRI) especially in certain cities like Mumbai, Bangalore, Gurugram etc.
- ❖ Considering a situation where an Indian resident tenant pays or remits rent to a Non-Resident Indian (NRI) landlord for a property located in India, such cross-border transactions **entail specific tax and regulatory** considerations under Indian law, especially under the Income Tax Act, 1961 and relevant Double Taxation Avoidance Agreements (DTAAs).

Tax Implications

- ❖ As the tenant situation in India is making a payment to a non-resident landlord, the transaction qualifies as an **outbound remittance**, which may be subject to tax implications under Indian Tax Act, 1961.
- ❖ The rental income earned by the NRI pertains to a **property located in India**, so it **accrues or arises in India**. Consequently, under Section 5 of the Income Tax Act, such income is taxable in India, and therefore, tax is required to be deducted at source (TDS) under Section 195 of the Act.
- ❖ Further, tax would be required to be deducted irrespective of whether the property is used for personal or business use and irrespective of the rent amount. **Form 15CA/15CB** must be filed before remittance, and the NRI must report this income in an Indian tax return.

Tax Implications

- ❖ Most Indian DTAAAs **include Article 6**, which provides that income from immovable property is taxable in both countries i.e. source and resident country.
- ❖ Further, TDS would be applicable on such transaction as per the rate prescribed in Finance Act, for section 195 of the Act which is **30% + cess + surcharge**. It is essential to maintain proper documentation, including:
 - Rent agreement
 - Payment receipts
 - Bank remittance advice
 - Declaration from the landlord regarding residential status and property details.

Penalties & Consequences of Non-Compliance

Non-Compliance	Section	Penalty/Consequence
Failure to deduct TDS	Sec. 201	Tenant treated as <i>assessee-in-default</i> , liable to pay TDS plus interest
Late deposit of TDS	Sec. 201(1A)	Interest @ 1%/1.5% per month
Non-filing of TDS return (Form 27Q)	Sec. 234E	₹200 per day (max = TDS amount)
Penalty for not obtaining TAN	Sec. 272BB	₹10,000
Failure to file Form 15CA/CB	Sec. 271I	₹1 lakh
Failure to deduct or pay TDS	Sec. 271C	Penalty equal to the amount of TDS deductible (i.e., up to 100% of TDS amount)

Our Comments

❖ Residential Status of Landlord

The landlord is required to ascertain his/her residential status in accordance with the provisions of **Section 6** of the Income Tax Act, 1961. If the landlord qualifies as a Non-Resident Indian (NRI), the provisions of **Section 195** of the Act are applicable. This section overrides general TDS provisions under Sections like 194-I.

❖ TDS Deduction Compliance

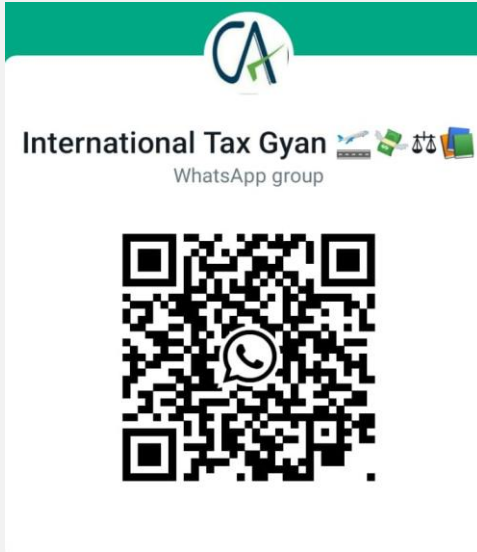
The applicable TDS rate is generally **30%** (plus applicable surcharge and cess), unless a lower rate is specified under a Double Taxation Avoidance Agreement (DTAA) or a certificate under Section 197 is obtained. The deducted tax must be deposited with the government by the **7th day of the following month**. Additionally, the tenant is required to file quarterly TDS returns in **Form 27Q** and issue a **TDS certificate in Form 16A** to the NRI landlord.

Our comments

❖ Requirement to Obtain TAN

In a situation where a resident individual tenant pays or remits rent to a Non-Resident Indian (NRI) landlord for a property situated in India, the tenant is required to deduct tax at source (TDS) under Section 195 of the Income Tax Act. In this case, the tenant must:

- Apply for a Tax Deduction and Collection Account Number (TAN) by filing **Form 49B** with the Income Tax Department.
- Quote the TAN while depositing the TDS and filing TDS returns (Form 27Q).



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