NRI selling property in India: TDS, Form 13 and repatriation.

A non-resident selling Indian property faces TDS on the entire sale price, not the gain. Here is how a Form 13 certificate fixes that, with a worked example and the repatriation path.

Prefer this as a designed, printable PDF? Get the playbook edition →

The problem: TDS on the whole sale price, not the gain

When a non-resident sells immovable property in India, the buyer must withhold TDS under the Income-tax Act, 2025 (erstwhile Section 195 of the 1961 Act) at **12.5% plus surcharge and cess** on the *entire sale consideration* for a long-term asset — not on the gain. This is the regime for transfers on or after 23 July 2024: a flat 12.5% long-term rate, without indexation of the purchase cost. On a ₹3 crore flat that is roughly ₹39 lakh withheld, even if the real tax on your actual gain is a fraction of that. You can reclaim the excess through your return, but the cash typically sits with the department for 8 to 14 months — an interest-free loan you never agreed to make.

Two details make this worse for NRIs specifically. First, the resident-seller rule most buyers know (1% TDS under erstwhile Section 194-IA) does *not* apply — the buyer of NRI property must obtain a TAN, deduct at the non-resident rate, and file Form 27Q, and buyers who get this wrong carry personal exposure, which is why well-advised buyers insist on doing it correctly. Second, surcharge scales with the consideration: above ₹1 crore the effective withholding rate climbs meaningfully past the headline 12.5%.

The fix: a Form 13 lower-deduction certificate

Form 13 (under erstwhile Section 197) asks your Assessing Officer to direct the buyer to withhold at your **actual** tax on the gain — or nil where Section 54 / 54F / 54EC reinvestment relief applies. Approved, the certificate is issued to the buyer for the specific transaction, and you receive the proceeds minus real tax rather than minus ~13% of the headline price. The application is filed online on TRACES, and the practical work is the gain computation: proving cost of acquisition, improvement costs, and inheritance basis where the property came down through family.

Worked example

- **Sale price** ₹3,00,00,000 · **cost** ₹2,20,00,000 · gain ₹80,00,000.

- **Section 195 TDS (default)** ≈ ₹39,00,000 withheld on the full consideration.
- **Actual LTCG tax** ≈ ₹10,40,000 (12.5% + cess on the ₹80 lakh gain).
- **Cash locked up** ≈ ₹28,60,000 — released up-front with an approved Form 13.

Estimate your own number → with our NRI TDS & Form 13 calculator.

Timing: file before you sign

A Form 13 application typically takes 4 to 8 weeks from complete submission to certificate, longer in metropolitan wards and where the cost basis is hard to evidence (inherited or gifted property, lost purchase deeds, multiple co-owners each needing their own application). The certificate must be in the buyer's hands *before* the payment on which TDS arises. The clean sequence: agree the deal in principle, file Form 13 with a draft agreement, receive the certificate, then execute and register. Sellers who sign first and apply later usually end up choosing between delaying completion and absorbing full withholding.

Reinvestment relief: reducing the tax itself

Withholding is about timing; Sections 54, 54F and 54EC reduce the underlying tax. Section 54 exempts the gain reinvested in one residential property in India (purchase within 2 years, or construction within 3; a one-time option to buy two properties exists for gains up to ₹2 crore). Section 54EC shelters up to ₹50 lakh of gains invested in specified bonds (NHAI/REC class) within 6 months. Section 54F applies where the asset sold is not a residential house. Each has lock-ins and conditions — but claimed in the Form 13 computation, they can bring certified withholding close to nil.

Repatriating the proceeds

Net proceeds land in your NRO account and move abroad under FEMA's remittance-of-assets framework — up to **USD 1 million per person per financial year**, supported by Form 15CA and a Form 15CB chartered-accountant certificate. Jointly held property gives each co-owner their own ceiling, and a sale completing near March can use two financial years' headroom within weeks. If the property was bought from NRE/FCNR funds as a non-resident, the original principal is repatriable outside the cap for up to two residential properties. Plan the certificate and the remittance together — the full mechanics are in our companion note, Repatriating money from India: NRO, NRE, the USD 1M scheme and Form 15CA/15CB.

What to file

- Form 13 with the lower-rate computation, on TRACES (per co-owner).
- Purchase deed, improvement invoices and cost working; draft sale agreement.
- Passport/visa and residency proof; PAN (active, with non-resident status updated); NRO/NRE details.
- Where reinvestment is claimed — the supporting undertaking and investment proof.
- For repatriation — Form 15CA/15CB and the bank's Form A2 with the tax trail.

Where it goes wrong

- **PAN inoperative** — NRIs are exempt from Aadhaar linking only if the department's records show non-resident status; an inoperative PAN triggers higher withholding and blocks the certificate.
- **Buyer has no TAN** — the deduction machinery cannot run without it; build it into the buyer's checklist early.
- **Basis records missing** — reconstructing a 1990s purchase price mid-transaction costs months; assemble the paper first.
- **Certificate arrives after payment** — Form 13 is prospective; it cannot refund tax already withheld.

Common questions

How much TDS is deducted when an NRI sells property in India?

For a long-term asset the buyer withholds about 13% (12.5% plus cess) of the full sale consideration for a long-term asset under the Income-tax Act, 2025 (erstwhile Section 195 of the 1961 Act). A Form 13 certificate can reduce this to the actual capital-gains rate.

How long does a Form 13 certificate take?

Typically 4–8 weeks from a complete application, longer where cost of acquisition is hard to establish (inherited/gifted property) or there are multiple owners.

Can an NRI repatriate the sale proceeds?

Yes — up to USD 1 million per financial year from the NRO account, with Form 15CA/15CB, subject to taxes being paid or certified.

This guide is general information, not legal or tax advice; positions turn on the facts of each case and the notified Rules. Get in touch for advice on your situation.

Advisory Monks Consulting (OPC) Private Limited — an independent advisory firm for India's founders, VCs and incubators, and everything cross-border. Partner-led, ex-Big 4 leadership.
info@advisorymonks.com · WhatsApp +91-8595116297 · www.advisorymonks.com