

TDS on Payments to Non-Residents and NRIs under Section 393(2): Rates in Force, Property Sale and Surcharge (Tax Year 2026-27)

Description

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Quick summary

- Payments to non-residents are covered by section 393(2) of the Income-tax Act, 2025 (old section 195): special rates for sportsmen, certain bonds and funds, and for everything else “rates in force”, which Part II of the First Schedule to the Finance Act 2026 sets: for a non-resident Indian 20% on investment income, 12.5% on long-term capital gains, 20% on short-term gains under section 196, 20% on royalty, fees for technical services and foreign currency interest, 30% on winnings and 30% on other income.
- For other non-residents (not NRI) the rates are the same except the residual rate is 30% for non-company and 35% for a foreign company, with 10% on dividend referred to in section 207(1) and 20% on other dividend.
- Where a tax treaty applies and the payee furnishes the residence certificate under section 159(8), the treaty rate applies for units of specified mutual funds and Foreign Institutional Investor income if lower than 20% (Note 2).
- The tax is increased by surcharge calculated on the income, and a payer who doubts that the whole payment is chargeable can apply to the Assessing Officer in Form 129 to fix the taxable proportion (section 395(2)); a payee can seek a lower deduction certificate in Form 128.

When an Indian payer pays a non-resident a sum that is chargeable to tax in India, tax must be deducted at source. In the Income-tax Act, 2025 (from 01/04/2026) this is **section 393(2)**, which replaces section 195 of the 1961 Act. The table in the section gives special rates for a few payments and says “rates in force” for most; the rate in force is fixed each year by the Finance Act.

How section 393(2) works

- The payer deducts tax on the **amount** of the income or sum, at the rate in column E, **at the earlier of credit and payment** (section 393(2)(a) and (b)).
- The table covers payments to a non-resident (and, for some items, a foreign company). Item 17, the main one, covers **any interest (other than interest in items 2 to 5) or any other sum chargeable under the Act, not being salary**

, paid to a non-resident other than a company, or to a foreign company, at the rates in force.

- The obligation applies to **all payers, resident or non-resident**, whether or not the non-resident payee has a residence, place of business, business connection or other presence in India (Note 3(b) to item 17).
- Where **interest is paid by the Government or a public sector bank or public financial institution** (item 17), tax is deducted only at the time of payment (Note 3(a)).

Special rates in the table

Item	Payment	Rate
1	Income of a non-resident sportsman or entertainer who is not an Indian citizen, or a non-resident sports association or institution (section 211)	20%
2	Interest on foreign currency loans or long-term infrastructure bonds, 01/07/2012 to 30/06/2023, by an Indian company or business trust	5%
3	Interest on rupee denominated bonds issued before 01/07/2023	5%
4	Interest on long-term or rupee denominated bonds listed only on an IFSC exchange	4% (issued 01/04/2020 to 30/06/2023); 9% (issued on or after 01/07/2023)
5	Interest paid by an infrastructure debt fund	5%
6	Distributed income of a business trust to a non-resident unit holder	5% or 10% by type of income
10 and 15	Income from units of specified mutual funds, and income of a Foreign Institutional Investor from securities	20%, or the lower treaty rate where the payee furnishes the residence certificate under section 159(8) (Note 2)
11, 12	Offshore fund: income from units, and long-term capital gains	10%; 12.5%
13, 14	Interest, dividend and long-term capital gains on bonds or Global Depository Receipts	10%; 12.5%
16	Income of a specified fund	10%
17	Any other sum chargeable	Rates in force

For interest in items 2 to 4, the deduction applies only on interest up to the amount at the rate approved by the Central Government (Note 1).

“Rates in force” for tax year 2026-27 (Finance Act 2026, First Schedule Part II)

Non-resident Indian (investment income, capital gains and others):

Income	Rate
Investment income	20%
Long-term capital gains under section 214 or 197(4), and other long-term capital gains (not those in Schedule II items 14 and 17 relating to old section 10(36))	12.5%
Long-term capital gains under section 198 above ?1,25,000	12.5%
Short-term capital gains under section 196	20%
Interest payable by the Government or an Indian concern on money borrowed in foreign currency (other than items 2 to 5)	20%
Royalty or fees for technical services payable by the Government or an Indian concern under approved agreements (and royalty on copyright or software to a resident, as listed)	20%
Winnings from lotteries, games, horse races and net winnings from online games	30%
Dividend referred to in section 207(1) Table Sl. No. 2	10%
Other dividend	20%
Whole of the other income	30%

Other non-residents who are not companies: the same list for royalty, fees, winnings, capital gains and dividends, and **30%** on the whole of the other income.

Foreign company: 20% on interest, royalty and fees under the cases above, 30% on winnings, 20% on short-term gains under section 196 and 12.5% on long-term gains, with **35%** on the whole of the other income.

Surcharge

The tax deducted is increased by a **surcharge** on a non-resident individual, HUF, association of persons, body of individuals or artificial juridical person (other than where income is taxed under section 202): **10%** where the income subject to deduction exceeds ?50 lakh and up to ?1 crore, **15%** above ?1 crore up to ?2 crore, **25%** above ?2 crore up to ?5 crore and **37%** above ?5 crore, with the surcharge on dividend income and capital gains under sections 196, 197 and 198 limited to 15%. Companies have their own table in Part II. Check the Schedule for the exact conditions for each class of payee.

Property sold by an NRI

The buyer deducts tax under item 17 at the rate for the type of gain: **12.5%** on long-term capital gains and, it appears, the residual 30% rate on short-term gains on property (confirm for the case), plus surcharge. The text of the Act applies the rate to the sum chargeable, so a buyer who deducts on the whole sale price without a certificate may deduct much more than the tax on the actual gain. To avoid this, the payee can apply in **Form 128** for a lower deduction certificate (section 395(1)), or the payer can apply in **Form 129** for the taxable proportion (section 395(2)). A resident individual or HUF buyer does not need a TAN for this deduction (section 397(1)(c)(iii)).

Treaty relief and documents

The payee who wants a treaty rate must hold a **certificate of residence** from its government and furnish the information in **Form 41** (section 159(8), Rule 75). The payer reports payments to non-residents in **Form 145** and, where required, a certificate of an accountant in Form 146 (Rule 220). Deductions on non-residents are reported in **Form 144** (quarterly statement; Rule 219).

Practical points

1. Decide whether the sum is **chargeable in India** before deciding to deduct; use Form 129 if it is only partly so.
2. Use the **right rate** for the payee's category (NRI, other non-resident or foreign company) and the nature of the payment.
3. Deposit the tax by the **7th of the next month** and file Form 144 on time; the late fee under section 427 applies to late statements.
4. Obtain the residence certificate and Form 41 **before** applying a treaty rate.

How CSM & Co LLP can help

We advise on deduction of tax on foreign payments, apply for lower deduction and taxable proportion certificates, and file Forms 144, 145 and 146. Please reach out to our team and we will be happy to assist.

Frequently asked questions

What is the TDS rate on an NRI's sale of property?

Tax is deducted under section 393(2), Table Sl. No. 17, at the "rates in force", which Part II of the First Schedule to the Finance Act 2026 sets as 12.5% for long-term capital gains on assets other than those covered by special rules, 20% for short-term capital gains under section 196 (equity shares and equity-oriented fund units on which securities transaction tax is paid), and, for short-term gains on property, it appears the residual "other income" rate of 30% applies (confirm for the case), increased by surcharge where the surcharge conditions are met. A payer or payee can apply for a certificate so that tax is deducted only on the gain.

Does the buyer of an NRI's property need a TAN?

A resident individual or HUF who must deduct tax on consideration for the transfer of immovable property to a non-resident under section 393(2), Table Sl. No. 17 is exempt from applying for a TAN (section 397(1)(c)(iii)), but the deduction and deposit are still required.

What rate applies to royalty and fees for technical services paid to a foreign company?

For payments by the Government or an Indian concern under approved agreements, 20% where the agreement is made after 31 March 1976 (royalty and fees for technical services). For other foreign company income the residual rate is 35% on the whole of other income. Check the treaty, which can reduce the tax if the payee holds a residence certificate and furnishes the information in Form 41.

What if the whole payment is not income in India?

The payer can apply to the Assessing Officer in the prescribed form (Form 129, Rule 214) to determine the appropriate proportion of the sum chargeable to tax, and tax is deducted only on that proportion (section 395(2)).

Do foreign payers or non-residents also have to deduct tax?

Yes. The obligation to deduct tax under item 17 extends to all persons, resident or non-resident, whether or not the non-resident has a residence, place of business, business connection or other presence in India (section 393(2), Note 3(b)).

Can the payee get a lower rate?

Yes, by applying in Form 128 for a lower or nil deduction certificate (section 395(1), Rule 213). The payer must then deduct at the rate in the certificate for its validity (section 395(1)(c)).

Official sources

- Income Tax Department: Income-tax Act, 2025 (sections 159, 393(2), 395, 397)
- Finance Act 2026, First Schedule Part II (rates and surcharge for deduction of tax at source)

Related reading

- TDS and TCS Compliance under the Income-tax Act, 2025: TCS Rates, Due Dates, Quarterly Statements, PAN Rule and Late Fee (Tax Year 2026-27)
- TDS Rate Chart under Section 393 of the Income-tax Act, 2025: Rates and Thresholds for Payments to Residents (Tax Year 2026-27)

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