TDS on property purchases remains unclear

Rule regarding deduction of 1% TDS by buyers of property of Rs.50 lakh and above on behalf of seller will come into force on 1 June

Buyers of property are awaiting 1 June with some trepidation as there's not enough clarity about how a tax deducted at source (TDS) provision that kicks in on that date should be implemented, according to analysts.

Apart from that, the government hasn't made it mandatory for sub registrars to ensure compliance of TDS norms while registering a property, which could render moot the measure.

Finance minister P. Chidambaram announced in this year's budget that property buyers have to deduct tax at source of 1% on behalf of the sellers on the transfer of immovable property of Rs.50 lakh and above.

The move was aimed at tracking real estate transactions to improve transparency, curb black money and generate additional revenue for the government to narrow the widening fiscal deficit. The real estate industry is still lobbying against the measure on the grounds that it will hurt sales.

To ensure easy compliance with the levy, Chidambaram introduced amendments doing away with the need of a Tax Deduction and Collection Account Number (TAN) for the person or entity deducting TDS.

"At present, if somebody is deducting a tax, then he will have to mention TAN. That is how it gets into the system and the reconciliation happens (at the tax department and banks)," said Vishwas Panjiar, director, tax and regulatory services at audit firm Walker Chandiok and Co.

"But now that the government has clarified retail buyers won't require TAN, there is a question of how this tax credit will flow since you need TAN to file return on tax

deduction that will give the seller credit," he said. "It may become very messy. It is best to make laws which are easier to comply (with), otherwise it will make defaulters out of good citizens."

He added that the TDS compliance process, which is fully online, may be hard to implement as the transactions won't be accompanied by a TAN. And even if there is one, not everyone is proficient at handling online procedures, he said.

"It is possible that they ask the buyer to issue a certificate in a prescribed format specifying details of tax deducted and deposited, etc.," said Gaurav Karnik, tax partner at Ernst and Young.

The TDS on real estate transactions had originally been suggested in the 2012 budget. But this was withdrawn after protests against such a measure from various quarters. Chidambaram then revived the levy after widespread abuse that saw transaction values being under-reported.

"In the earlier year's budget, government had introduced 1% TDS, which they had to drop probably because of the stiff resistance they faced. However, there was a provision last year that the registering authority is not supposed to register a property until it is satisfied that the buyer has done the TDS compliance," said Panjiar. "This requirement is not in this year's budget."

Karnik also pointed out that for making the mechanism much more robust, the government will have to make the sub-registrar responsible for ensuring TDS compliance as a prerequisite for registering a property sale.

The industry is lobbying for a rollback of the measure, said Lalit Kumar Jain, chairman of the Confederation of Real Estate Developers Associations of India (Credai).

"It is not helping the industry much in any way. It will only make the process difficult for buyers since government has not given any guideline on the procedure of filing TDS," he said.

The TDS provision may not have much of an impact on builders but could hurt sentiment among retail buyers, said Lalit Rustagi, chief financial officer and president, finance and accounts, Ansal Properties and Infrastructure Ltd.

"It will just increase our work load while buying land. From retailers' side, it may impact sentiments which are already weak. The real estate sector is reeling because of the liquidity crunch. Banks are not giving loans and many developers are defaulting," he said.

(Livemint.com)