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Section 194-IC / Clause 393(1): TDS on Monetary Consideration under Joint Development Agreements — A Comprehensive Technical Analysis

Joint Development Agreements (JDAs) have become a preferred mode of real estate development in India, especially where landowners collaborate with developers without transferring land outright. While Section 45(5A)¹/67(14) of the Income Tax Act defers capital gains taxation for individual and HUF landowners to the year of the completion certificate, Section 194-IC/Clause 393(1)

mandates deduction of tax at source on the monetary consideration paid under such agreements. This article comprehensively examines the scope, applicability, timing, compliance requirements, judicial precedents, and practical challenges relating to Section 194-IC/Clause 393(1), with specific focus on issues faced by developers and landowners during assessments and audits.

This article examines the provisions of Section 194-IC/Clause 393(1) of the Income-tax Act, 1961 (as amended up to the Finance Act, 2023) relating to TDS on monetary consideration under Joint Development Agreements and notes their continuity under the new Income-tax Act, 2025, where Section 194-IC is renumbered as Clause 393(1). The corresponding capital gains provision under Section 45(5A) is likewise renumbered as Section 67(14), with both provisions carried forward under the new legislation without substantive change.

Introduction

Joint Development Agreements (JDAs) have become increasingly common in India's real estate sector, particularly in Tier-I and Tier-II cities. In a typical JDA, the landowner contributes land, while the developer contributes capital, construction expertise, approvals, and marketing.

To bring clarity to taxation in such arrangements, the Finance Act 2017 amended the Income Tax Act and introduced:

- Section 45(5A)/67(14)** – defers capital gains taxation for individuals/HUF landowners until completion certificate.

- Section 194-IC/Clause 393(1)** – mandates TDS on monetary consideration paid in a JDA covered under 45(5A)/ 67(14).

Thus, 194-IC/Clause 393(1) acts as a revenue safeguard for the Government because capital gains tax gets postponed, but monetary consideration may be paid much earlier.

Legislative Background and Purpose

Prior to the Finance Act, 2017, taxation of JDAs was governed by general provisions relating to transfer under Section 2(47). Courts had taken varying views on whether

handing over of possession under a development agreement constituted a transfer, leading to uncertainty and inconsistent tax treatment. While Section 45(5A)/ 67(14) deferred capital gains taxation, the absence of a corresponding TDS mechanism created revenue leakage risks. Section 194-IC / Clause 393(1) was therefore introduced to ensure timely collection of tax on the monetary component of consideration

Before the introduction of Section 194-IC/Clause 393(1):

- Landowners receiving advance payments from developers often did not disclose income promptly.

¹ Section 45 and its sub-section pertain to 1961 Act, while section 67 and sub-sections pertain to 2025 Act; Further section 194 – IC pertains to 1961 Act and section 393 pertains to 2025 Act.

- Developers were unsure which TDS section applied — 194-IA, 194-C or 194-J.
- Capital gains were triggered in the year of signing the JDA due to Section 2(47)(v) read with the Transfer of Property Act.

This created substantial litigation and liquidity challenges.

“Section 194-IC/Clause 393(1) acts as a revenue safeguard for the Government because capital gains tax gets postponed, but monetary consideration may be paid much earlier.”

3. JDA falls under Section 45(SA)/67(14).
4. Developer pays monetary consideration (lump sum / installments / rent / hardship compensation / shifting allowance / corpus).
5. Payment is income in nature (not refundable security deposit).

(It is pertinent to note that Section 45(SA)/ 67(14) applies only where the specified development agreement is registered, and consequently, Section 194-IC/Clause 393(1) would apply only in such registered agreements.)

not adjustable against consideration and supported by contractual terms, may generally fall outside the scope of Section 194-IC/Clause 393(1). However, deposits which are adjustable, forfeitable, or linked to consideration may attract TDS implications).

It may be noted that the Income-tax Act, 1961 does not provide an exhaustive definition of ‘monetary consideration’ for the purposes of Section 194-IC/Clause 393(1). The above inclusions represent a conservative interpretative approach based on practical and departmental perspectives and may vary depending on facts and contractual terms.

Finance Act 2017 introduced a harmonious scheme:

Provision	Purpose
Section 45(SA)/ 67(14)	Defers capital gains for landowners to the year of completion certificate
Section 194-IC / Clause 393(1)	Ensures tax deduction on monetary consideration received early

Thus, 194-IC/Clause 393(1) ensures tax compliance on the cash component, even though capital gains are taxable later.

Statutory Text (Simplified)

Section 194-IC/Clause 393(1) requires:

- Developer to deduct TDS @ 10%
- On any monetary consideration
- Paid to individual/HUF landowner
- Under a specified agreement (i.e., JDA covered by Section 45(SA)/67(14))
- No threshold limit
- TDS to be deducted at the time of payment or credit, whichever is earlier

Applicability Conditions

Section 194-IC/Clause 393(1) applies only when ALL the following conditions are met:

1. There is a Joint Development Agreement.
2. Landowner is an individual or HUF.

Scope of Monetary Consideration (Broad Interpretation)

The term *monetary consideration* includes:

- Lump sum consideration
- Monthly compensation
- Goodwill money
- Hardship allowance
- Temporary accommodation rent paid to landowner
- Development charges paid directly to landowner
- Advance / token money
- Corpus fund
- Reimbursement that is not purely cost-to-cost

Not included:

- Constructed area share
- Refundable security deposit
- Reimbursement of actual cost (with proof)

(Purely refundable security deposits,

When Does TDS Arise?

- At the time of credit in books
- OR at the time of payment, whichever is earlier

Thus, even a mere accounting entry triggers TDS.

Rate & Threshold

- **Rate:** 10%
- **No threshold** → TDS from Re.1 onwards
- **PAN mandatory:** otherwise, Section 206AA applies @ 20%

This is stricter than 194-IA (which has ₹50 lakh threshold).

(Further, provisions of Section 206AB relating to higher deduction of tax in case of specified non-filers may also be applicable, subject to statutory exclusions.)

Detailed Examples

The following examples assume that the landowner is an Individual or HUF and that the specified agreement is registered, thereby attracting the provisions of Section 45(SA)/67(14).

Example 1 — Basic Case of Lump Sum Payment

Facts:

- JDA executed: 15 June 2024
- Landowner receives:

- ₹80,00,000 monetary consideration
- 40% built-up area
- Payment in 4 instalments of ₹20,00,000 each.

TDS working:

Instalment	Amount	TDS @10%	Net Paid
1	20,00,000	2,00,000	18,00,000
2	20,00,000	2,00,000	18,00,000
3	20,00,000	2,00,000	18,00,000
4	20,00,000	2,00,000	18,00,000

TDS must be deposited monthly in Form 26Q.

Example 2 — Different Timing for TDS vs Capital Gains

- JDA signed: FY 2023-24
- Money paid: FY 2024-25
- Completion certificate: FY 2027-28

Event	Provision Triggered	Timing
Payment of monetary consideration	194-IC/Clause 393(1) TDS @10%	FY 2024-25
Completion certificate issued	45(5A)/67(14) capital gains	FY 2027-28

- TDS and capital gains occur in different years.
- Landowner may claim refund for many years.

Example 3 — Advance Paid Before Signing JDA

If developer pays advance before JDA is executed:

- 194-IC/Clause 393(1) does not apply
- Could fall under 194-IA (property purchase)
- Or 194-C (work contract) depending on structure
- Once JDA is signed → The amount is re-characterized as 'Monetary Consideration' under 194-IC/Clause 393(1). The developer must reconcile the advance paid and ensure that TDS under 194-IC/Clause 393(1) is discharged, either retrospectively (if the payment was credited to the books) or immediately on re-characterization.

However, upon execution of the Joint Development Agreement, where such advance assumes the character of monetary consideration under the specified agreement, the obligation to deduct tax under Section 194-IC/Clause 393(1) may arise at the stage of such re-characterisation.

Example 4 — Payment to Multiple Co-owners

If 3 co-owners receive ₹30 lakh each:

Developer must deduct separate TDS entries:

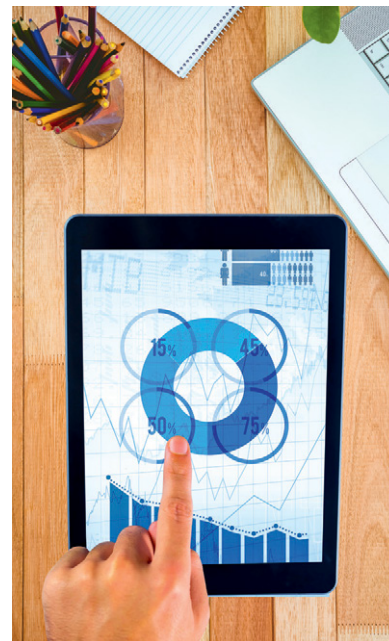
Co-owner	Payment	TDS	Net Paid
A	30,00,000	3,00,000	27,00,000
B	30,00,000	3,00,000	27,00,000
C	30,00,000	3,00,000	27,00,000

PAN compulsory for each.

Interaction with Other TDS Sections

Section 194-IC/Clause 393(1) applies only where the conditions of Section 45(5A)/67(14) are satisfied, including landowner being an Individual or HUF and the agreement being registered. In cases where these conditions are not met, applicability of other TDS provisions such as Section 194-IA would depend upon the facts and structure of the transaction.

“It may be noted that the Income-tax Act, 1961 does not provide an exhaustive definition of 'monetary consideration' for the purposes of Section 194-IC/Clause 393(1).”



Section	Nature	Applicability vs 194-IC/Clause 393(1)
194-IC / Clause 393(1)	Monetary Consideration under JDA	Special Provision: Applies only when Section 45(5A)/67(14) is triggered (i.e., landowner is an Individual or HUF). Overrides all others in this specific case.
194-IA	Property Purchase	Not Applicable when 194-IC/Clause 393(1) applies. However, if the landowner is a company/firm/AOP (and 45(5A)/67(14) does not apply), 194-IA could potentially be applicable to the transfer of the capital asset, depending on the structure.
194-C	Work Contract	Generally, Not Applicable to the primary land consideration. May be considered on payments <i>strictly</i> in the nature of construction services provided by the developer to the landowner (uncommon under JDA).
194-I	Rent	Not Applicable to consideration for land transfer. Only applies if the payment is genuinely for the rent of premises/land usage, separate from the JDA consideration.

TDS Compliance for Developers

Monthly Compliance

- TDS deposit within 7 days of month end
- Quarterly TDS return in Form 26Q
- Issue Form 16A to landowner

Books of Accounts

Developer must create either:

- Monetary consideration ledger
- Advance to landowner ledger
- Hardship allowance ledger
- Shifting compensation ledger

Any credit in these accounts triggers TDS.

Challenges for Landowners

Biggest Challenge – TDS Credit Appears Early

TDS appears in Form 26AS and is also reflected in the Annual Information Statement (AIS) and Taxpayer Information Summary (TIS) in the year of deduction. But capital gain is taxed in year of completion certificate as per Section 45(5A)/67(14).

This leads to:

- Refunds for multiple years
- Credit mismatch

- Cash flow issues

Landowners must maintain TDS credit tracking.

Practical Mistakes Seen in Assessments/Audits

- Deducting TDS at 1% (194-IA).
- Treating constructed area as monetary consideration.
- Not deducting TDS on monthly hardship allowance.
- Delaying TDS deduction until completion.
- Deducting TDS only at project completion, not at payment.
- Using a common PAN for all co-owners.

Judicial Precedents

1. CIT v. Dr. T.K. Dayalu (2011) 336 ITR 617 (Kar.)

(Issue of transfer under development agreements)

- JDA creates transfer only when possession is handed over.
- Helps determine applicability of 45(5A)/67(14).

(The Circular primarily clarifies the scope and applicability of Section 45(5A)/67(14) and does not independently define or expand the scope of monetary consideration under Section 194-IC/Clause 393(1).)

“Section 194-IC/ Clause 393(1) significantly strengthens tax governance in Joint Development Agreements by mandating withholding of tax on the monetary component payable to landowners.”

2. PCIT v. Vembu Vaidyanathan (2019) 107 (Bombay HC)

(Timing issues in taxation of JDAs)

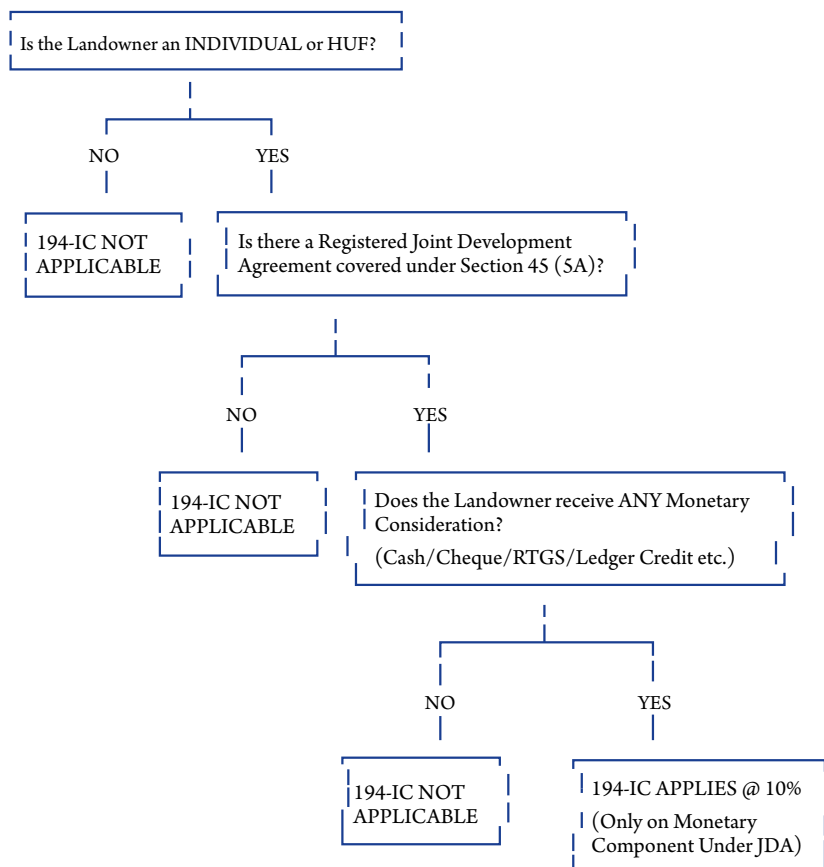
- Reiterated principle that capital gain event happens in year of completion.

3. CBDT Circular No. 2/2018

- Clarifies that 45(5A)/67(14) applies only to individual/HUF landowners.
- TDS under 194-IC/Clause 393(1) applies only to monetary consideration.

It may be noted that judicial precedents directly interpreting the scope of ‘monetary consideration’ under Section 194-IC/Clause 393(1) are presently limited.

Flowchart – When Does Section 194-IC/Clause 393(1) Apply?



Checklist for Developers

Stage	Key Compliance Requirement	Details / Notes
Before Executing JDA	Obtain PAN of each landowner	Mandatory for correct TDS mapping and TDS credit allocation for each co-owner under Sec 194-IC / Clause 393(1)
	Identify monetary component of consideration	TDS @10% is applicable only on monetary consideration paid by developer
	Identify co-owners and respective share %	Required to deduct TDS proportionately and report separately in TDS Returns (Form 26Q)
During Project	Deduct TDS at 10% on every payment or credit	Deduct at the earlier of: (a) payment; or (b) credit to landowner ledger
	Deposit TDS monthly	Due date 7 th of next month, except 30 April for March deductions
	File quarterly TDS returns	File Form 26Q for all co-owners separately; ensure mapping of payments & challans
Post-Payment	Issue Form 16A to landowners	Mandatory TDS certificate to be issued quarterly
	Maintain detailed ledgers	Ledger-wise: <i>Payment Date, Amount, TDS Deducted</i> for audit/tracing purposes
	Reconcile with Form 26AS & AIS	Ensures landowner receives full TDS credit, avoids future litigation

Checklist for Landowners

Stage	Key Compliance Requirement	Details / Notes
Before Signing JDA	Clarify monetary component	Needed to determine TDS u/s 194-IC / Clause 393(1) (10% on monetary consideration). Helps compute future capital gains.
	Ensure Sec. 45(5A)/ 67(14) applicability	Available only to individual/HUF landowners and registered JDA; taxation deferred till completion certificate.
	Review possession-handling clause	To ensure possession is not considered “transfer” for capital gains unless 45(5A)/ 67(14) applies.
During Project Execution	Track TDS entries	Match every payment/credit to correct co-owner ledgers; verify monthly challans.
	Maintain Form 26AS & AIS	Regular checking avoids mismatch disputes; ensures landowner receives correct TDS credits.
	Plan refunds (if excess TDS deducted)	Useful when monetary component is staggered or lower than expected.
After Completion Certificate	Declare capital gains correctly	Compute capital gains in year of CC if 45(5A)/ 67(14) applies; else as per normal transfer rules.
	Claim full TDS credits	Reconcile with 26AS/AIS & developer’s Form 26Q; ensure no mismatch in ITR.

Conclusion

Section 194-IC/Clause 393(1) significantly strengthens tax governance in Joint Development Agreements by mandating withholding of tax on the monetary



component payable to landowners. When read together with Section 45(5A)/ 67(14), it creates a balanced framework—while capital gains taxation is deferred to the year of completion certificate to ease liquidity pressures on landowners, the Government’s revenue interests are safeguarded through timely tax deduction at source.

Nevertheless, the divergence in timing between TDS deduction and capital gains recognition poses practical challenges, particularly in the form of prolonged refunds, credit mismatches, and cash-flow constraints for landowners, and compliance risks for developers. These challenges underscore the importance of precise drafting of JDAs, accurate identification of monetary consideration, and strict adherence to TDS procedures.

Given the increasing prevalence of JDAs in India’s real estate sector, a sound understanding of Section 194-IC/Clause 393(1) is indispensable for chartered accountants and tax professionals

advising stakeholders. Proper application of this provision can substantially reduce litigation, ensure tax certainty, and facilitate smoother execution of joint development arrangements.

References

- *Income Tax Act, 1961*
- *Finance Act, 2017*
- *CBDT Circular No. 2/2018*
- *CIT v. Dr. T.K. Dayalu (Kar. HC)*
- *PCIT v. Vembu Vaidyanathan (Bom. HC)*
- *ICAI Publications – Real Estate Transactions*

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