

Deduction Of TDS Under Section 206AB/ 206CCA Of Income Tax Act, 1961

Background: The Finance Act, 2021 has introduced higher rates for Tax Deduction at Source (TDS) and Tax Collection at Source (TCS) u/s 206AB & u/s 206CCA, respectively. These new sections impose a higher rate of TDS / TCS on transactions done with the non-filers of Income Tax Return. These provisions are applicable from 1st July 2021.

I. Deduction of tax at source as per rates specified in section 206AB:

Section 206AB of the Income Tax Act, 1961 mandates TDS on any sum or income or the amount paid, or credited, to a "specified person".

A "specified person" for this purpose is defined as

- i. who has not filed the returns of income for both of the **TWO** Assessment Years (relevant to the **TWO** Previous Years) which are immediately before *the previous year in which tax is required to be deducted for which the time limit of filing return of income under sub-section (1) of section 139 has expired*
- ii. **and** *the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.*

Specified person does not include a non-resident not having a permanent establishment in India. ("Permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on)

The rate of TDS shall be the higher of the following rates, namely:—

- (i) *at twice the rate specified in the relevant provision of the Act; or*
- (ii) *at twice the rate or rates in force; or*
- (iii) *at the rate of five per cent.*

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Non applicability of higher rate of TDS u/s 206AB: This section is not applicable to the deductions required to be made from following payments:

- i) Salary (section 192/192A)
- ii) Winnings from lotteries (section 194B)
- iii) Winnings from horse races (section 194BB)
- iv) Income from investment in securitization fund (section 194LBC)
- v) Cash withdrawal in excess of INR 1 crore from bank (section 194N)

Points to be remembered:

1. It is not necessary that the Return of income has to be filed for both the two previous years. The Return of income filed even for one year shall suffice.
2. The Revised Return of income is considered as a valid return of Income filed for this section and shall not cause any issue to the deductee/collectee.
3. The section makes it clear that we have to check the immediately preceding previous year for which due date u/s 139(1) has expired and hence if the due date for previous year is still not expired, then we should obtain an undertaking for the 2 immediately preceding years to the previous year whose due date u/s 139(1) is still not expired.

For Eg. Due date to file Return of income for FY 20-21 is 30th September,2021, so while deducting tax as on 5th July,2021, we have to check Return of Income for the FY 19-20 and FY 18-19 (since due date to file return of income for FY 20-21 is not expired as on 5th July,2021). Post 30th September,2021, the two years which are relevant are FY 20-21 and FY 19-20.

4. The aforesaid points are applicable to the provisions of section 206CCA as well.

For example:

M/s ABC Ltd is required to pay Rs. 50,000 as professional fees to Mr. Y (the consultant). For the new provisions, M/s ABC must ask Mr. Y's tax residential status in India and a copy of his PAN card. Alongwith the above documents, M/s ABC must ensure itself of the following before deducting tax at 10% (u/s 194J TDS for Professional Fees):

- That Mr. Y has filed his return of income in India as applicable for AY 1920 and AY 2021 (Previous Year ended 31-03-2019 and 31-03-2020 respectively (any one of these two years). A declaration to that effect needs to be obtained from Y. Copy of acknowledgements of return of income may be asked for. However Y will be in his own right not to give a copy of acknowledgement **AND**

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- That the aggregate of tax deducted at source and tax collected at source of Mr. Y in FY 2020 and FY 2021 is more than INR 50,000 in each of these two previous years.

II. Collection of tax at source as per rates specified in section 206CCA:

Section 206CCA of the Income Tax Act, 1961 mandates TCS on any sum or income or the amount received from a "specified person".

A "specified person" for this purpose is defined as

- who has not filed the returns of income for both of the **TWO** Assessment Years (relevant to the **TWO** Previous Years) which are immediately before *the previous year in which tax is required to be deducted for which the time limit of filing return of income under sub-section (1) of section 139 has expired*
- and** *the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years.*

Specified person does not include a non-resident not having a permanent establishment in India. ("Permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on).

The rate of TDS shall be collected at the higher of the following rates, namely:—

- at twice the rate specified in the relevant provision of the Act; or*
- at the rate of five per cent.*

For example:

M/s XYZ Ltd is required to receive Rs. 12,50,000 on account of sale consideration for sale of motor vehicle from Mr.A. For the new provisions,, M/s XYZ Ltd. must ask for Mr. A's tax residential status in India and a copy of his PAN card.

Alongwith above documents, M/s XYZ Ltd must ensure itself of the following before collecting tax at 1% (u/s **206C(1F)** TCS for Sale of Motor Vehicle):

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- That Mr. A has filed his return of income in India as applicable for AY1920 and AY 2021 (Previous Year ended 31-03-2019 and 31-03-2020 respectively (any of these two years). Copy of acknowledgements of return of income may be asked for. However, Mr.A will be in this own right not to give a copy of acknowledgement. **AND**
- That the aggregate of tax deducted at source and tax collected at source of Mr. A in FY 1920 and FY 2021 is more than INR 50,000 in each of these two previous years.

III. Rate of TDS/TCS for persons not holding a PAN (Permanent Account Number)

The new sections 206AB and 206CCA have been inserted after section 206AA and section 206CC respectively of the Income Act, 1961 which provide for the **higher rate of TDS/TCS for non-furnishing of PAN (Permanent Account Number).**

- **Section 206AA:** This section is applicable in the case where the person fails to furnish the PAN,
- **Section 206AB:** This section is applicable in the case where the person fails to file two years return.

Under the respective sections the person who is responsible for deducting the tax, as the case may be, is required to apply the tax rate at the higher of the following:

Tax is required to be deducted - 206AA/CC- Failure to submit PAN	Tax is required to be Deducted- 206AB- Failure to file two years return
(i) at the rate specified in the relevant provision of this Act.	(i) at twice the rate specified in the relevant provision of the Act; or
(ii) at the rate or rates in force; or	(ii) at twice the rate or rates in force; or
(iii) at the rate of 20%.	(iii) at the rate of 5%.

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- **Section 206CC:** This section is applicable in the case where the person fails to furnish the PAN.
- **Section 206 CCA:** This section is applicable in a case where the person fails to file two years return.

Under the respective sections the person who is responsible for collecting the tax, as the case may be, is required to apply the tax rate at the higher of the following:

Tax is required to be collected - 206CC -Fail to submit PAN	Tax is required to be collected- 206CCA - Fail to file two years return.
i) at twice the rate specified in the relevant provision of the Act; or	(i) at twice the rate specified in the relevant provision of the Act; or
(iii) at the rate of 5%.	(iii) at the rate of 5%.

Hence, where both the section 206AA and 206AB are applicable i.e. the specified person has not submitted the PAN as well as not filed the return; the tax shall be **deducted at the higher rate amongst both the sections i.e. TDS is required to be deducted at the higher rates amongst section 206AA and 206AB**. Similar conclusion applies in the case of TCS .

Please note that where the person is an Individual and is required to link Aadhaar to PAN **and** he has not done so by 30th September, 2021, then the PAN shall become inoperative. In such circumstances such payee cannot furnish an inoperative PAN and as such this case falls under the category of non furnishing of PAN and attracts higher TDS/TCS as per the provisions of section 206AB/206CCA.

IV: Duties of tax deductors and tax collectors:

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- Every tax deductor and tax collector is now required to obtain an undertaking from the payee enquiring whether payee has filed the return of income either for PY ended 31-03-2019 and PY ended 31-03-2020 . Considering the onerous responsibility cast on the deductors, CBDT vide circular 11 dated 21st June,2021has introduced the functionality titled "Compliance Check for Section 206AB & 206CCA" . The said functionality is available on reporting portal of the department i.e the following website:

<https://report.insight.gov.in/reporting-webapp/portal/homePage>

- Tax Deductors are required to deduct and deposit the tax so deducted to the Government on or before
 - 7th of the next month except when deduction is for the month of March and
 - 30th April when deduction is for the month of March

TDS return in the above case has to be filed by last date of the next month immediately preceding the quarter.

- Tax Collectors are required to collect and deposit the tax so collected to the Government on or before
 - 7th of the next month

TCS return in the above case has to be filed by 15th of the next month immediately preceding the quarter.

Annexure A

