

## SECTION 206AB AND 206CCA (Along with circular no. 11/2021 dated 21.06.21)

### TDS/ TCS for Non-filer of ITR

As in case of non-furnishing of PAN it is seen that Section 206AA/ 206CC of the Act provides for higher rate of TDS/ TCS and these provisions have served their purpose in obtaining and furnishing of PAN by various person. Therefore, there was need to have similar provisions to ensure filing of return of income by those person who have suffered a reasonable amount of TDS/TCS. Accordingly, Finance Act 2021 inserted two new sections 206AB and 206CCA of the Income-tax Act, 1961 ('the Act') which takes effect from 1.07.2021. These sections mandate tax deduction or tax collection at higher rate in case of certain non-filers. Let's have a look:

#### **Section 206AB: Special provision for deduction of tax at source for non-filers of income-tax return (Applicable w.e.f. 01.07.2021)**

This section provides for deduction of tax at higher rates if tax is deductible under any provision on any sum or income or the amount paid, or payable or credited, **by a person to a specified person**. However, this provision is **not applicable** where tax is

deductible under sections 192, 192A, 194B, 194BB, 194LBC or 194N

*Deductor: A Person*

*Deductee: A Specified Person*

#### **Now who is a Specified Person?**

##### **Condition 1:**

A person who has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately prior to 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;

For above condition it is important to understand that which two years need to be checked for non- filer of ITR

Example:

In case a person need to deduct tax in month of July 2021, then the two years data that he need to check of the deductee would be AY 2020-21 and AY 2019-20, as for AY 2021-22 the time limit for filing ITR has not expired in the month of July 2021. Whereas, if the person is deducting tax of the same deductee let's say in month of December 2021, then

the two years data that he need to check of the deductee would be AY 2021-22 and AY 2020-21.

So in one financial year let's say 2021-22, this condition can be both i.e. applicable as well as not applicable on the deductee. All depends on the month in which tax is to be deducted.

### **Condition 2:**

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

So in our above example if tax is deducted in month of July 2021, then the aggregate amount of tax deducted by the deductor in AY 2020-21 and AY 2019-20 of the deductee would be checked. If such amount is less than 50,000/-, then such provision will not apply.

### It is important to note that:

- a. The specified person shall not include a non-resident who does not have a permanent establishment in India;
- b. Both the conditions need to be satisfied to be covered under the specified person

In case if the above conditions are satisfied then Deductor shall deduct tax under this provision at the **higher** of the following rates:

- Twice the rate specified in the relevant provision of the Act; or
- Twice the rate or rates in force; or

- 5%.

Also where the provisions of section 206AA (Requirement of Furnishing PAN) is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in section 206AA.

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The above section deals with tax deduction at source, for tax collection at source a **similar Section 206CCA** has been inserted to provide that the collector shall collect tax at a higher rate from the specified person. The collector shall collect tax under this provision at the higher of the following rates:

- Twice the rate specified in the relevant provision of the Act; or
- 5%.

However, where both the provision of this section and Section 206CC are applicable, the collector shall collect tax at rates provided in this section or in section 206CC, whichever is higher.

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In the above provisions, the CBDT realized that an extra compliance burden has been put upon the tax deductor and the tax collector in verifying the deductee or collectee as a specified person. To ease this compliance the CBDT is issuing a new functionality "Compliance check for section 206AB and 206CCA" as mentioned in the Circular no. 11/2021 dated 21.06.2021.



This functionality is made available through reporting portal of the Income-tax Department. The tax deductor or the collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee and can get a response from the functionality if such deductee or collectee is a specified person.

The deductor or the collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of non-specified person during that financial year. To illustrate, let us assume that a deductor has 10,000 vendors that he deals with. He can use the functionality in the bulk search mode and can get the result of all these 10,000 PANs at one go. Let us assume that the functionality has shown that out of these 10,000 PANs, 5 PANs are of specified person for the purposes of sections 206AB and 206CCA of the Act. Now with respect of the remaining 9,995 PAN, it is clear that they are not in the list of specified persons for that financial year. Since no new name would be added in the list of specified persons during the financial year, the deductor or collector can be assured that these 9,995 PANs would remain outside the list of specified persons during that financial year. Thus, deductor or collector need not check again with respect to these 9,995 PANs during that financial year. There are chances that the 5 PANs which are of specified persons may move out of the list

during the financial year and for that there will be need to recheck at the time of making tax deduction or tax collection.

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