

Double TDS/TCS

under Section
206AB & 206CCA

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Background & Relevance

- The central government proposed Section 206AB (TDS) & Section 206CCA (TCS) consist of a special provision for the deduction of TDS at a higher rate
- for the non-filers of income tax return within the time limit of Section 139(1).
- The purpose is to bring more people into the tax net.
- The move has come to include those who hold a PAN card and have taxable income
- but for some or other reason don't file their ITRs.

Applicability

- Section 206AB/206CCA states that,
- where tax is required to be deducted/collected at source
- on any sum or income or amount paid/received or payable or credited by any person
- to/from the *specified person*,
- then tax shall be deducted/collected at higher rates.

Rate

<u>For Section 206AB</u>	<u>For Section 206CCA</u>
Higher of the following	Higher of the following
(i) At twice the rates specified in the relevant provisions of the act	(i) At twice the rates specified in the relevant provisions of the act
(ii) At twice the rate or rates in force	(ii) At the rate of 5%
(iii) At the rate of 5%	

- At the rate 20% (in case of non-furnishing of PAN – Section 206AA & 206CC)

Who is Specified person?

- Now, 'Specified person' means a person satisfying all the below mentioned conditions
- **Condition 1** – Person has not filed their Income Tax Return for two previous years.
- **Condition 2** – The time limit for filing of such return of income U/s 139(1) has expired.
- **Condition 3** – Aggregate of Tax deducted/collected at source in each of these two financial year is INR 50,000/- or more.
 - *Example, For FY 2021-22 effective 1st July 2021, specified person shall mean those persons who has not filed their Income Tax Return for **both** the FY 2018-19 & FY 2019-20 and whose total tax deducted/collected during **each** of FY 2018-19 & FY 2019-20 were INR 50,000/- or more.*

Effective Date

- 1st July, 2021

Not Applicable

- Both Section 206AB/206CCA are not applicable to a *non-resident who does not have a permanent establishment in India*.
- Further, provisions of section 206AB does not apply to any sum or income or amount paid or payable or credited on which tax is otherwise deducted at source under below mentioned provision of Chapter XVIIIB:
 - Section 192 – Salary
 - Section 192A – Payment of accumulated balance due to an employee
 - Section 194B – Winnings from lottery or crossword puzzle
 - Section 194BB – Winning from a horse race
 - Section 194LBC – Income in respect of investment in securitisation trust
 - Section 194N – Payments of certain amount/amounts in cash

Penal provisions

- There are no changes in the due date & enforceable as usual it was applicable for the TDS/TCS.
- In the case of TDS/TCS provisions, the primary onus is on the Deductor/Collector to comply with the provisions. Otherwise, he is considered as “assessee in default”.
- The tax deductor will face the following consequences if they fail to deduct TDS as per the provisions:
 - – Disallowance of expenditure
 - – Interest on late payment and
 - – Penalties.

Difficulties

- It can be seen that the tax deductor or the tax collector is required to do a due diligence of satisfying himself if the deductee or the collectee is a specified person. This can lead to extra compliance burden on such tax deductor or tax collector
- Further the due date in case of different assessee is different so deductor need to check the specified person again on the relevant due date. Further in case of extension of ITR date, the deductor has to again check the specified person on expiry of such extended date.

Solution

- **Circular No. 11/2021; Dated: June 21, 2021**
- A list of specified persons is prepared as on the start of the financial year 2021-22, taking previous years 2018-19 and 2019-20 as the two relevant previous years.
- List contains name of taxpayers who did not file return of income for both assessment years 2019-20 and 2020-21 and have aggregate of TDS and TCS of fifty thousand rupees or more in each of these two previous years.
- During the financial year 2021-22, no new names are added in the list of specified persons.
- This is a taxpayer friendly measure to reduce the burden on tax deductor and collector of checking PANs of non-specified person more than once during the financial year.
- If any specified person files a valid return of income (filed & verified) for assessment year 2019-20 or 2020-21 during the financial year 2021-22, his name would be removed from the list of specified persons.

Solution

- If any specified person files a valid return of income (filed & verified) for assessment year 2021-22, his name would be removed from the list of specified persons.
- If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2020-21, is less than fifty thousand rupees, his name would be removed from the list of specified persons.
- Belated and revised TCS & TDS returns of the relevant financial years filed during the financial year 2021-22 would also be considered for removing persons from the list of specified persons on a regular basis.

Solution - Example

- A deductor has 10,000 vendors.
- He can use the functionality to check.
- Functionality has shown that out of these 10,000 PANs, 5 PANs are specified persons.
- 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.
- The list would be drawn afresh at the start of each financial year and the above process would have to be repeated

Declarations

- Deductee/Collectee can give self-declaration to their respective tax deductor/collector about the non-applicability of Section 206AB/206CCA upon them.
- You can find the declaration Formats in the following link

How to identify Specified Persons?

- In view of the above, Income Tax Department has facilitated a new functionality '**Compliance Check for Section 206AB & 206CCA**' to facilitate tax deductors/collectors to verify if a person is a 'Specified Person' as per section 206AB & 206CCA. This functionality is made available through Reporting Portal of Income-tax Department (<https://report.insight.gov.in>).
- You can follow the step by step process for using the above functionality as given in Quick Reference Guide for Compliance Check for Section 206AB & 206CCA
- Download the Quick reference guide here -

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