

BRIEFING OF SECTION 206AB/206CCA

The Central Government of India in order to bring under the umbrella the persons, who are not filing the Income Tax Return though they are liable to, introduced vide Finance Act, 2021 two new Sections viz Sec 206AB and 206CCA in the Income-tax Act, 1961 (herein after referred as 'the act'), which provides for deduction of TDS or Collection of TCS at **higher tax rates** with effect from 01 July 2021.

The Sec 206AB of the act provides for deduction of TDS 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
- the rate **of five per cent**

The Sec 206CCA of the act provides for deduction of TDS at the higher of the following rates:

- **twice the rate specified in the relevant provision of the Act**; or
- **the rate of five percent**

However, the aforesaid higher rates shall be applicable to any sum or income or amount paid or payable or credited by a person to specified persons only, whereby the Specified Person are described as below:

- a. The Person who has not filed the income tax returns for both the immediately preceding two Assessment Years (AYs) for which the time limit of filing the return under section 139(1) has expired; and
- b. The aggregate of **TDS or TCS** is INR 50,000 or more in each of these two previous years.

The aforesaid provisions for deduction of taxes at higher rate are not applicable to the TDS deductions to be made in the following sections:-

| Sr. No. | Section | Description |
|---------|----------------|---|
| 1 | Section 192 | Salary |
| 2 | Section 192A | Premature withdrawal from the accumulated balance of Provident Fund which is taxable in the employee's hands. |
| 3 | Section 194B | Winning from the card game, crossword, lottery, puzzle or any other games. |
| 4 | Section 194BB | Winning from horse race. |
| 5 | Section 194LBC | Income against investment in the securitization trust. |
| 6 | Section 194N | Payments of certain amount/ amounts in cash |

The example for the better understanding of the provisions is as under:

For example, in case you are making a payment to a contractor, you are liable to deduct TDS at the rate of 1%. In case the contractor hasn't filed the ITR for the past two years and TDS of more than ₹50,000 was collected in each of the two years, then you will have to deduct TDS at the rate of 5% instead of 1%.

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Practical Implementation of Section 206AB of the act

Although, the government's move of inserting these sections to take into ambit the non-filers of return seems useful till date, but it has certainly increased the burden of the deductor(s) or collector(s) to compile the data of their vendors and establish the fulfilment of the above laid conditions in order to avoid the short deduction or collection of taxes.

Now, the smooth implementation of this section would require the deductors/collectors to get the fact confirmations from their vendors, for which the Income Tax Department has not provided any Form or Declaration or Link at its e-filing portal till date, however till then the Deductor(s)/Collectors for the sake of their own convenience can take the declarations from the vendors themselves, one such sample of declaration is as under:

Sample for Declaration

"Date.....

Entity Name

PAN-..... [TAN-.....]

Address,

.....

.....

Kind Attn.:

Dear Sir/Madam,

Declaration in accordance with Section 206AB/206CCA of the Income Tax Act, 1961

I, _____, in the capacity of _____ (Director/ Partner/ Self/ etc.), of M/s. _____, hereby provides the declaration that I fulfil the conditions laid in Sec 206AB of the Income Tax Act, 1961, as follows:

- I have filed the Income Tax Return under section 139 of the Act for the Assessment Year 2019-20 and 2020-2021 (**Attached is the**):

| Relevant Year | Whether filed | ITR Form No. | ITR Filing Date | Acknowledgement No. | Attachments (if Yes) |
|-------------------------|---------------|--------------|-----------------|---------------------|--|
| AY 2019-20 (FY 2018-19) | Yes / No | | | | Screenshot of my e-filing Portal alongwith Acknowledgement of Return |
| AY 2020-21 (FY 2019-20) | Yes / No | | | | Screenshot of my e-filing Portal alongwith Acknowledgement of Return |

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- *I will be filing the Income Tax Return under section 139 of the Act for the Assessment Year 2021-22:*
 - Yes
 - No

- *The aggregate of Tax deducted at Source ('TDS') and Tax collected at Source ('TCS') of Assessment Year 2019-20 has exceeded INR 50,000:*
 - Yes
 - No

- *The aggregate of TDS and TCS of Assessment Year 2020-21 has exceeded INR 50,000:*
 - Yes
 - No

- *I have linked my PAN with Aadhaar number or will link it before 30 Jun 2021 (or any further date as may be notified by CBDT):*
 - Yes
 - No
 - Not applicable as I am not an individual / Sole proprietor*

*We do hereby declare that to the best of my /our knowledge and belief what is stated above is correct, complete and is truly stated. In case there is a tax liability, interest or penal consequences which is levied on **your entity name** on account of the representation/ declaration, I/we undertake to fully indemnify **your entity name** for the same.*

Thanks
Name of Authorized Signatory
(Designation)

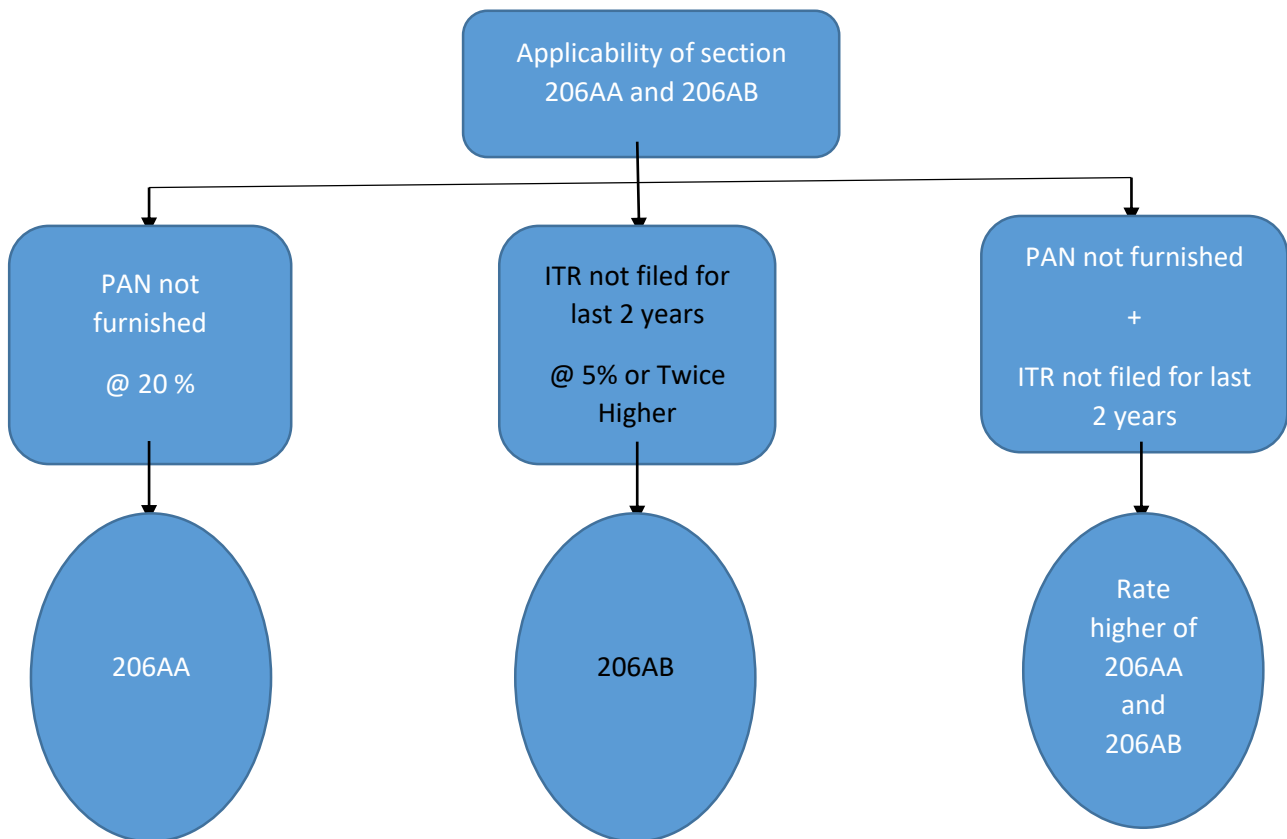
Signature”

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Section 206AB related with Sec 206AA of the act

We all are aware that there already exists a provision for the deduction of tax at a higher rate i.e. Sec 206AA of the act, wherein it has been laid that if the deductee does not provide the PAN no. then the deductor shall be liable to deduct the tax at the rate of 20%, the insertion of Sec 206AB has raised a doubt that what shall be the rate if the provisions of Sec 206AA of the act apply on the specified person as well. The answer to this question has been provided in Sec 206AB Sub Sec 2 of the act itself, in accordance to which the tax shall be deducted at the rate higher of the two rates provided in Sec 206AA and Sec 206AB of the act.

Applicability of Section 206AA and 206AB:-



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Important Bullet Points:-

No exception even if the recipient is 'not liable' to file the return

One of the conditions to invoke this provision is non-filing of return of income by the recipient. The provision does not carve out an exception in favour of the recipient who was otherwise not liable to file the return. This section provides for deduction of tax at higher rates if the deductee has not furnished the return of income of the specified period, irrespective of the fact that whether he was required to furnish it or not.

This may invite troubles for the non-residents who are having a PE in India but otherwise not liable to file the return of income in view of the exemption extended by Section 115A (5). The super senior citizens will also face the heat if the tax was deducted from their income yet they did not file the return of income.

Example, Mr A (80+ Years) earned interest income of Rs. 5, 00,000 in both the preceding years. TDS of Rs. 50,000 has been deducted under Section 194A in each year. As his income was below the maximum exemption limit, he was neither liable nor he furnished the return of income of the relevant period. In the current year, the tax now will be deducted at the higher rates prescribed under Section 206AB.

Example 2, Mr X going abroad for higher studies for two years. He buys foreign currency for an amount equivalent to Rs. 20 lakhs each in the next two financial years. The authorized dealer shall collect a tax of Rs. 65,000 from such amount under Section 206C (1G) (a). As Mr X will not have any income, he will not file the return of income for both the previous years. When he returns to India after completion of his studies, his income (other than the excluded one) shall be subject to TDS at a higher rate due to operation of Section 206CCA at least for one year.