

# TDS/TCS U/S 206AB & 206CCA of Income Tax Act, 1961

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## Applicability & Analysis Section 206AB and 206CCA of Income Tax Act, 1961

**Introduction:** Section 206AB and 206CCA are newly inserted sections in the Income Tax Act, 1961 vide **Finance Act, 2021**. These sections are special provisions for deduction/collection of tax at source at a higher rate for certain non-filers (*specified person*) of Income Tax Return.

Section 206AB deals with deduction of tax (**TDS**) at a higher rate whereas Section 206CCA deals with the collection of tax (**TCS**) at a higher rate. Since both the sections are similar in nature, efforts have been made to discuss both the section in tandem.

**Effective Date:** Section 206AB and 206CCA are effective from 1<sup>st</sup> July 2021.

Section 206AB and Section 206CCA are non-obstante sections having an overriding effect on any other provision/section contrary to this under the Income Tax Act.

Sub-section (1) of Section 206AB/206CCA states that, where tax is required to be deducted/collected at source on any sum or income or the amount paid/received or payable or credited by any person to/from the ***specified person***, then tax shall be deducted/collected at higher of the following rates:

<u>For Section 206AB</u>	<u>For Section 206CCA</u>
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(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%	

Further, Sub-section (2) of Section 206AB/206CCA provides that on Non-furnishing of **PAN** by the specified person, Section 206AA/206CC shall be applicable in addition to this section respectively and the tax shall be deducted/collected at higher of two rates provided in Section 206AB/206CCA and in Section 206AA/206CC.

### **Who is 'Specified Person'/ Conditions for Applicability of Section 206AB/206CCA**

Section 206AB/206CCA is applicable to a Specified person.

Now, 'Specified person' means a person satisfying **all** the below mentioned conditions but shall not include a *non-resident who does not have a permanent establishment in India*:

Condition 1 – Person has not filed their Income Tax Return for two previous years immediately preceding the previous year in which tax is required to be deducted/collected

Condition 2 – The time limit for filing such a return of income U/s 139(1) has expired.

Condition 3 – Aggregate of Tax deducted/collected at source in each of these two financial years is INR 50,000/- or more

*Therefore, For FY 2021-22 effective 1<sup>st</sup> July 2021, a specified person shall mean those persons who have 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.*

## How to Identify 'Specified Person' by Tax Deductors/Collectors

Since tax deductor/collector is responsible for deducting/collecting TDS/TCS, it becomes their responsibility to identify the specified person which in turn leads to an additional burden on their part. To ease this compliance burden, CBDT has issued a Circular regarding the use of functionality under Section 206AB and 206CCA of the Income-tax Act, 1961 vide **Circular No. 11 of 2021 F. No. 3701331712021-TPL dated 21<sup>st</sup> June 2021**. Wherein a new functionality "**Compliance Check for Section 206AB and 206CCA**" is made available through reporting portal of the Income Tax department.

The tax deductor/collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee/collected and can get a response from the functionality if such deductee/collected is a specified person. For PAN Search, the response will be visible on the screen which can be downloaded in PDF format. For Bulk Search, the response would be in the form of a downloadable file that can be kept for record. [The logic of how the functionality works have also been explained in detail here.](#)

Additionally, Deductee/Collected can give self-declaration to their respective tax deductor/collector about the non-applicability of Section 206AB/206CCA upon them.

Sample format of Self-Declaration is mentioned below:

" (On the letter-head of entity)

Dear XXXX (Deductor's/Collector's Name)

Sub: Declaration regarding the filing of Income Tax Returns for past years

This letter is to inform you that Finance Act 2021 has introduced a new provision w.e.f. 1st July 2021 vide section

206AB/206CCA under Income Tax Act 1961 for deducting/collecting TDS/TCS at a higher rate for non-filing income tax return (ITR) which is otherwise required to be furnished under section 139 (1) of the Income Tax Act,1961.

In this regard, I/We....., having PAN:....., hereby declare that I/We have duly filled our Income Tax Return for two previous years immediately preceding the previous year in which tax is required to be deducted/collected for which time limit for filing u/s 139(1) has expired and hence TDS/TCS should not be deducted/collected at a higher rate.

Details of ITR filling has been mentioned below

Assessment Year	Acknowledgment Number	Date of Filing

Further, we do hereby declare that what is stated above is true and correct to the best of my/our knowledge and belief. In case there is any tax liability, interest, or penal impositions upon you or your organization on account of this representation/declaration, I/we undertake to fully indemnify you/organization for the same.

Thanks,

For \_\_\_\_\_

Name of Authorized Signatory with Designation & Signature

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### **Non-Applicability/Exemptions under Section 206AB/206CCA**

Both Section 206AB/206CCA is not applicable to a *non-resident who does not have a permanent establishment in India.*

Further, provisions of section 206AB do not apply to any sum or income or the amount paid or payable or credited on which

tax is otherwise deducted at source under the below-mentioned provision of Chapter XVIIB:

- 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 securitization trust
- Section 194N – Payments of certain amount/amounts in cash

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