

Tax Deduction or Collection at Source for Not Filing of Income Tax Return

A new section is introduced in the Finance Bill, 2021 for deduction and collection of tax at source at higher rates if an amount is paid or payable to the specified person who did not file the income tax return. Section 206AB for TDS is inserted after section 206AA of the income tax act. The latter provides for deduction of TDS at higher rates for non-furnishing of Permanent Account Number (PAN). Similarly, section 206CCA for TCS is inserted after section 206CC of the income tax act

What is section 206AB and 206CCA?

Section 206AB provides TDS or tax deduction at source on amounts paid or payable to the specified persons not filing their income tax return at rates higher than specified in the act.

Similarly, section 206CCA provides tax collection at source (TCS) on amounts received by a specified person at rates higher than specified in the act.

Date from when the provisions of Section 206AB and 206CCA are applicable?

These provisions of Sec 206AB and 206CCA are applicable from 1st July, 2021.

Do I have to give declaration every year for updating status of my Income Tax Return filing?

Yes.

Nature of transactions on which these sections are not applicable.

The nature of the transaction can be any transaction excluding the following:

- ✓ TDS on Salaries u/s 192
- ✓ TDS on accumulated balance due to an employee u/s 192A
- ✓ TDS on winnings from lottery u/s 194B
- ✓ TDS on winnings from horse race u/s 194BB
- ✓ TDS on income in respect of investment in securitization trust u/s 194LBC
- ✓ TDS on payment of certain amounts in cash u/s 194N

What are the Conditions to Deduct TDS or Collect TCS?

The tax shall be deducted/collected at source if the payment/collection is made to/from the person satisfying the following conditions:

- The person does not file income tax return for both of the previous two Financial Years (FYs) immediately before the FY in which tax is required to be deducted,
- the income tax return (not belated return) filing due date is expired and
- The total amount of TDS and TCS is Rs.50,000 or more in each of these two previous years.

It does not apply to a non-resident who does not have a permanent establishment in India. Permanent establishment for this purpose includes a fixed place of business where the enterprise's business is carried out wholly or partially.

What is the rate at which TDS should be deducted?

The tax shall be deducted at source (TDS) on higher of below:

- Twice at the rates prescribed in the relevant provisions of the income tax act.
- At five per cent.

In addition to non-filing of income tax return, if the specified person does not furnish PAN, then the TDS rate shall be higher than the rates prescribed in this section or section 206AA of the income tax act.

What is the Rate at which TCS should be collected?

The tax shall be collected at source (TCS) on higher of the following;

- Twice at the rates prescribed in the relevant provisions of the income tax act.
- At five per cent.

In addition to non-filing of income tax return, if the specified person does not furnish PAN, then the TCS rate shall be higher than the rates prescribed in this section or section 206CC of the Income Tax Act.

Illustration

A company makes a contract payment of Rs. 80 lakhs to Mr P for the preceding two previous years (FY 2019-20 and FY 2018-19). The tax was deducted at 1% (Rs. 80,000 each year) by the company.

Mr P did not file his IT return for both the years and the due date of filing the return has expired.

Hence, when the company deducts tax in the FY 2020-21 and learns that the payee has not filed his ITR for the last two years, the TDS should be deducted at higher of the following:

- Twice the rate prescribed in the Act, i.e. 2% (twice of 1%), or
- 5%

Hence, the tax should be deducted at the rate of 5%.

Further, if PAN is not furnished, then TDS shall be deducted at the rate of 20%, which is higher than 5% or 2% (twice of 1%).