

**J.B.NAGAR STUDY CIRCLE OF ICAI**



**RECENT IMPORTANT  
NOTIFICATIONS & CIRCULARS,  
RELATING TO TDS AND TCS**

Compiled by CA Avinash Rawani

# TDS provisions – A Glance for changes

- ▶ Chapter XVII of the Income Tax Act, 1961 deals with TDS;
- ▶ Section 190 to Section 234G deals with TDS provisions;
- ▶ Section 192 to Section 196D deals with the nature of payments where TDS is required to be deducted;
- ▶ Other Sections deals with other compliance and requirement provisions.
- ▶ Several payments such as salary, interest, commission, brokerage, professional fees, royalty, contract payments, etc. In respect of payments to which the TDS provisions apply, the payer has to deduct tax at source on the payments made by him and to deposit the tax deducted to the credit of the Government;
- ▶ After depositing TDS to file the TDS Return within the specified time limit as per the Applicable Form;
- ▶ Issue TDS certificate generated from the TDS Portal within the specified time limit.
- ▶ TDS Returns now it will also be required to report all the payments made to persons under Section 194-A wherein tax has been deducted, not deducted due to submissions of declarations or deductions that are below the exemption limit provided under the Section (Applicable reporting to Banks);
- ▶ Online filing of application by a person making payments to non-resident seeking determination of tax to be deducted at source

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# Issues

## When is the TDS deposited to the credit of the government?

Mode of TDS payment	Due date of payment
When is the tax paid without an Income Tax Challan?	On the same day (applicable in case of book adjustment.)
TDS made during the month of March	On or before 30 April.
TDS made during months other than March	On or before 7 days from the end of the month.
TDS on purchase of immovable property (1941A)*	On or before 30 days from the end of the month of deduction.
TDS on rent (1941B)*	On or before 30 days from the end of the month of deduction.

(\*challan cum statement in Form 26QB 26QC needs to be filed)

**Note:** In certain cases, quarterly payment of TDS can be permitted with the prior approval of the Assessing Officer.

Particulars	Form No.	The frequency of certificate issuance
TDS certificate on salary	Form 16	Annually
TDS certificate on payments other than salary	Form 16A	Quarterly
TDS certificate on purchase of immovable property	Form 16B	15 days of filing 26QB
TDS certificate on rent	Form 16C	15 days of filing 26QC
TCS certificate	Form 27D	Quarterly

Multiple payments can be clubbed in quarterly TDS certificate

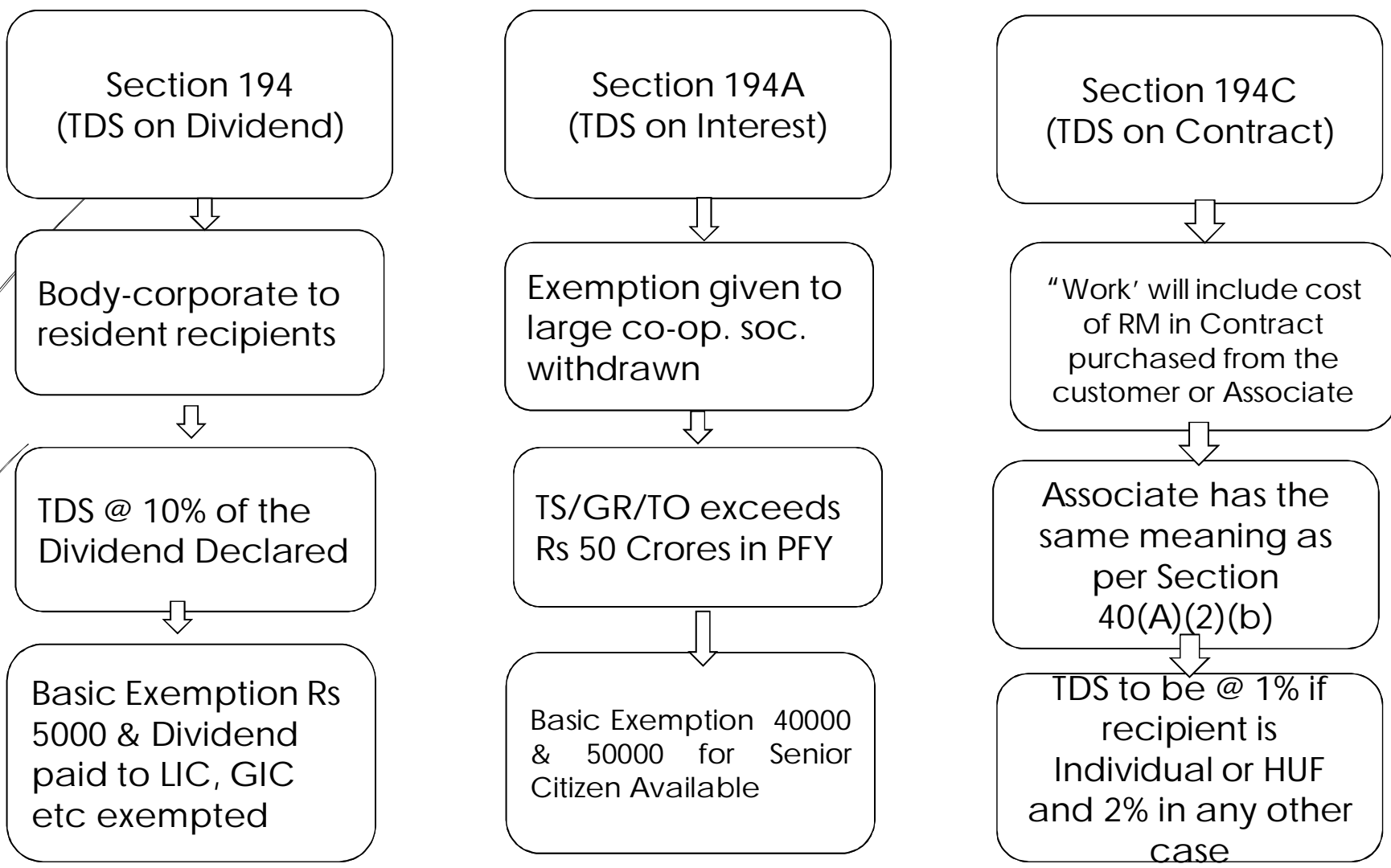
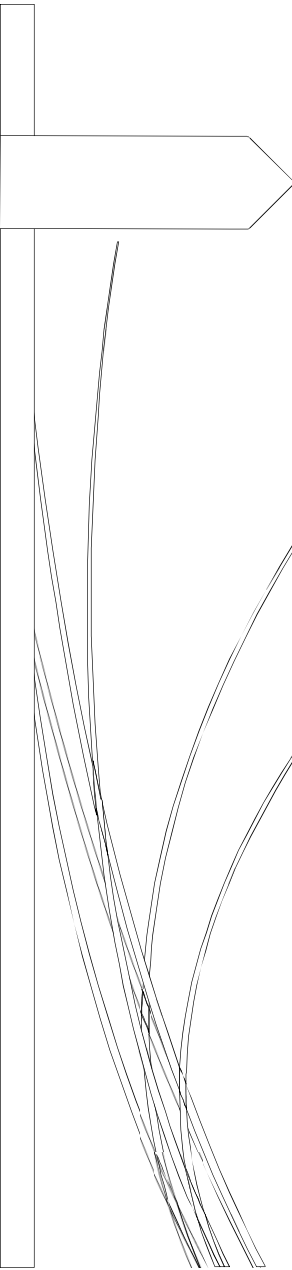
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# Press Release dated 13<sup>th</sup> May 2020

## ■ Section 192 (TDS on Salary)

- TDS on ESOPS given by eligible Start-up, referred to in Section 80-IAC, is treated as perquisite under Section 17(2)(vi) in any previous year and the same has been considered as income of the previous year in which the option has been exercised by the employee and accordingly tax is deducted in that Assessment Year. From the financial year commencing on or after 1st April, 2021, shall deduct or pay as the case may be tax within 14 days-
  - (i) after the expiry of forty-eight months from the end of the relevant assessment year; or
  - (ii) from the date of the sale of such specified security or sweat equity share by the assessee; or
  - (iii) from the date of the assessee ceasing to be the employee of the person
- whichever is the earliest, on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted or transferred by eligible start-up referred to in Section 80-IAC.

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Section 194J  
Professional &  
Technical Services

TDS on FTS @ 2%

Royalty for sale,  
Distribution or Exhibition  
also at 2%

Professional Fees  
TDS @ 10%

FTS as per Section 9  
Explanation Section  
2(vii)(1)

Section 194K Income from  
Units of MF

MF covered under  
Section 10(23D)

No TDS on Capital gains on  
sale of units

TDS @ 10%

Basic Exemption limit Rs 5000

Section 194O TDS on E-  
Commerce Transactions

TDS @ 1% on Gross Sale  
or Services or both

Sale of goods or provision of  
services of an E-commerce  
participant is facilitated by an E-  
commerce operator through it's  
Digital Platform

TDS to be deducted at the  
time of credit or payment  
whichever is earlier

Exemption to Transactions covered under any  
other TDS Clause & an amount for hosting  
advertisements or other non-related services.  
Individuals/HUF exempted if value is less than 5  
Lakhs and PAN/Adhar is given

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## TDS on cash withdrawals [Section 194N]

- Modified from 1<sup>st</sup> July, -2020
- Relevant deductors / payors – a banking company, a co-operative society engaged in banking business and a post office
- Rates of TDS

<b>Particulars</b>	<b>Aggregate cash withdrawals threshold</b>	<b>Rate of TDS</b>
Non-filers	Exceeding Rs. 20 lakh upto Rs. 1 crore	2%
Non-filers	Exceeding Rs. 1 crore	5%
Others	Exceeding Rs. 1 crore	2%

# TDS on cash withdrawals [Section 194N]

- Non-filers are those persons who have not filed their returns of income for preceding three financial years for which time limit of filing tax returns under section 139(1) has expired
- Applicable to all payees except following...
  - Government, a Banking company, a co-operative society engaged in the banking business and a Post office
  - Business Correspondent appointed by a bank [Notification No. 68 dated 18.09.2019]
  - White Label Automated Teller Machine Operator or franchisee
  - *Commission agent or trader operating under Agriculture Produce market Committee (APMC) and registered under any law relating to Agriculture Produce Market of the concerned State [Notification No. 70 dated 20.09.2019]*

*AD and its franchise agent and sub-agent and FFMC licensed by the Reserve Bank of India and its franchise agent for (i) Purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by Reserve bank of India; or*

*(ii) Disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the Reserve Bank of India; [Notification No. 80 dated 15.10.2019]*



# Other Sections

- Section 194LBA - concessional deduction of tax at 5% by a specified company or a business trust, on distributed income paid to non-residents (not being a Company). The rate of tax deduction is increased to 10%. (Effective from Assessment Year 2021-22)
- Section 194LC - concessional TDS @ 5% by a specified company or a business trust, on interest paid to non-residents. The period of said concession deduction extended to 01-07-2023 from 01-07-2020. Further, the rate of TDS is reduced to 4% on interest payment against borrowings through issues of long-term bonds and RDB which are listed only on a recognised stock exchange in any IFSC.
- The period concessional TDS of 5% is extended to 01-07-2023 from existing 01-07-2020. Further, the said concessional rate shall also apply on the interest payable to an FII or QFI in respect of the investment made in municipal debt security. (Effective from Assessment Year 2021-22).
- Section 195 of the Act for deduction of tax in respect of income paid to non-residents, the second proviso relating to of interest payable by the Government or a public sector bank within the meaning of Section 10(23D) or a public financial institution, TDS is made only at the time of making actual payment. Deduction of tax to be at the time of crediting the interest in the books of account. The exemption provided to dividend referred to in section 115-O is proposed to be deleted (Effective from Assessment Year 2021-22)

# Certain clarifications vide Circular No. 17/2020 dated 29<sup>th</sup> September, 2020

Section 194O will not be applicable for transactions in securities and commodities traded through recognized stock exchanges or cleared and settled by recognized Clearing Corporation including clearing corporation located in IFSC;

Section 194O will also not be applicable for electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation of CERC;

Payment Gateways not required to deduct TDS if the TDS is deducted by e-commerce operator;

Section 194O will not be applicable for transactions in case of insurance, provided insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of the insurance policy.

Section 194O threshold limit of Rs 5 Lacs Applicable from 1<sup>st</sup> April, 2020 i.e. transactions done from 1<sup>st</sup> April, 2020 to 30<sup>th</sup> September, 2020 will also be considered for basic exemption limit.

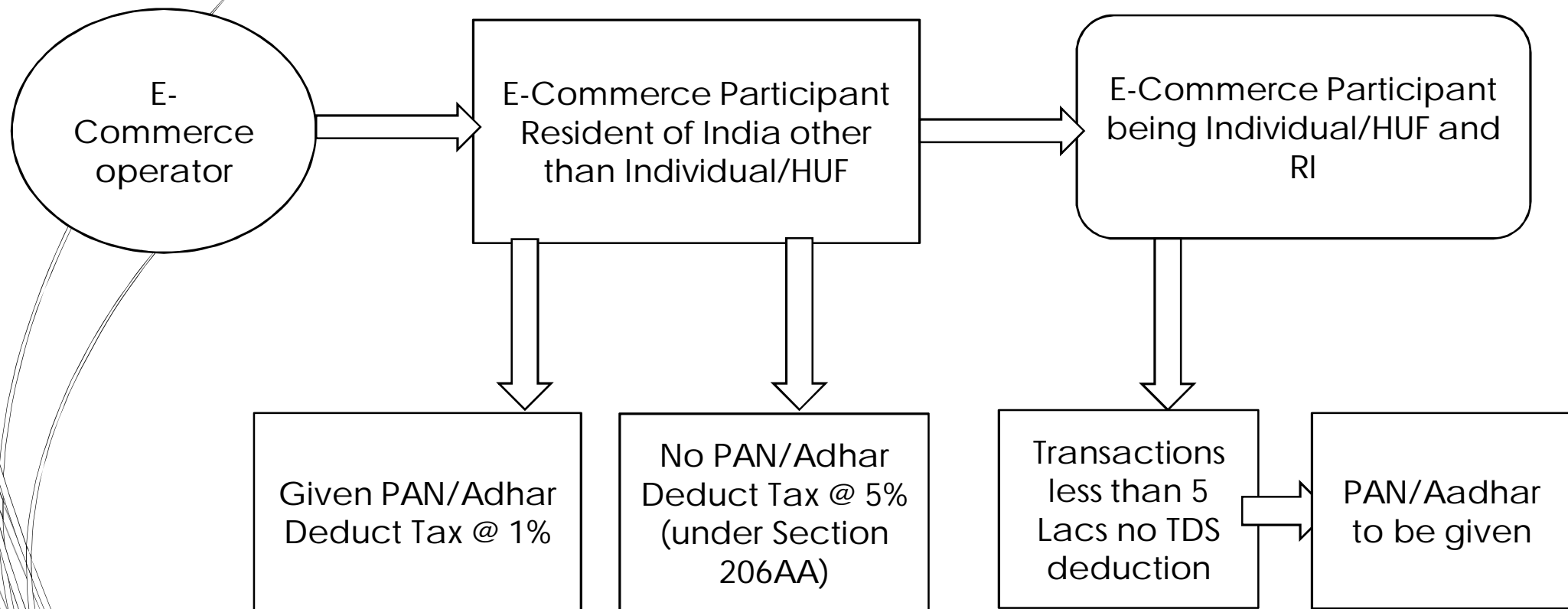
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# Section 194O- Certain Practical Difficulties

- E-commerce operator to mean a person who owns, operates or manages digital or electronic facility or platform for electronic commerce and is responsible for paying to e-commerce participant;
- The stipulation as regards responsibility for paying to e-commerce participants has been done away with;
- Section 206AA of the Act provides for higher rate of tax deduction @ 20% in a case where the payee does not furnish his PAN to the deductor but for the purpose of section 194O, the deduction will be made @ 5%;
- No threshold is however available at all for E-commerce participants other than Individual and HUF;
- Direct receipt of the money from customers by the E-commerce participant in Cash on Delivery transactions (COD) will also need to be included for the purpose of deduction by E-commerce operator;
- E-commerce participants will also continue to deduct TDS from payments made to E-commerce operators under the applicable provisions like 194C, 194J, 194H etc. in cases where the payments are unconnected to the sales or services facilitated through the e-platform. **He must be resident of India;**
- No adjustment for Goods Returned.
- TDS deduction to be made on Gross amount of Sales or Service. TDS is to be made on the gross amount of sales and not on income embedded in it;
- Non-resident E-commerce operator will also need to comply with section 194O

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# Summary of Section 194-O (Applicable from 1<sup>st</sup> October, 2020)



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# Section 194Q- TDS on Purchase of Goods

- ▶ Section 194Q- TDS on Purchase of Goods Introduced in Finance Act, 2021;
- ▶ Deduct 0.1% (5% in No PAN/Aadhar cases) of such sum exceeding Rs. 50 Lakhs as TDS;
- ▶ Applicable on Satisfaction of following conditions
  - ▶ The Person should be the buyer of goods:
    - ▶ Turnover to be more than Rs. 10 Crore in the last financial year;
    - ▶ Buyer means a who has resident person who has purchased of any goods of the value or aggregate of such value exceeding in a previous year of Rs. 50 Lakhs;
    - ▶ whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year;
    - ▶ amount is credited to any account by whatever name called, these provisions shall apply;
    - ▶ Central Government, State Government, Local Authorities etc and other persons as may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification shall be exempted from TDS
- ▶ Applicable from 1<sup>st</sup> July, 2021
- ▶ Compiled by CA Avinash Rawani

# Section 194Q- TDS on Purchase of Goods

- Not Applicable in the following cases
  - tax is deductible at source under any other provision of this Act;
  - tax is collectible under the provisions of section 206C other than a transaction to which section 206C(1H) applies;
- The seller covered by section 206C(1H) would collect 0.1% (w.e.f. 01.04.2021) and the buyer would deduct 0.1% w.e.f. 01.07.2021;
- If on a transaction TCS is required under section 206C(1H) as well as TDS under section 194Q, then in respect of that transaction only TDS under section 194Q shall only be carried out.

# Section 194Q-Guidelines Circular 13 of 30/06/2021

- ▶ Section 194Q will not apply to
  - ▶ securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clea including recognized stock exchanges or recognized clearing corporation located in IFSC;
  - ▶ transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC;
  - ▶ Section shall not apply to any transactions which has been entered into prior to the effective date but for the calculation of the threshold turnover limit the amount will be taken into account;
  - ▶ If the amount of GST is shown separately in the invoice, then the tax has to be deducted on the amount without GST;
  - ▶ In case of purchase return if the tax is deducted earlier on payment basis because the payment is earlier than the credit, the tax would be deducted on the whole amount as it is not possible to identity that payment with GST component of the amount to be invoiced in future;

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# Section 194Q-Guidelines Circular 13 of 30/06/2021

## ► Section 194Q will not apply to

- No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced;
- Provisions of section 194Q of the Act shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such nonresident in India;
- provisions of section 194Q of the Act shall not apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.);
- section 194Q of the Act shall apply to advance payment made by the buyer. It is clarified that since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q of the Act shall apply to advance payment made by the buyer to the seller;
- Under second proviso to sub-section (I H) of section 206C of the Act, provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.



# Section 194Q-Guidelines Circular 13 of 30/06/2021

- Section 194Q will not apply to
  - If tax has been deducted by the e-commerce operator on a transaction under section 194-0 of the Act [including transactions on which tax is not deducted on account of sub-section (2) of section 194-0], that transaction shall not be subjected to tax deduction under section 194Q of the Act;
  - If a transaction is both within the purview of section 194-0 of the Act as well as section 194Q of the Act, tax is required to be deducted under section 194-0 of the Act and not under section 194Q of the Act;
  - Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1 H) of section 206C of the Act on the same transaction.
- *If a transaction is both within the purview of section 194-Q of the Act as well as sub-section (1 H) of section 206C of the Act, the tax is required to be deducted under section 194-Q of the Act. The transaction shall come out of the purview of sub-section (1 H) of section 206C of the Act after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax under sub-section (1 H) of section 206C of the Act on the same transaction. However, if, for any reason, tax has been collected by the seller under sub-section (1 H) of section 206C of the Act, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and subsection(1H) of section 206C of the Act.*

# Other Sections

- Section 196A of the Act revives its applicability on TDS on income in respect of units of a Mutual Fund. Substituted “of the Unit Trust of India” with “from the specified company defined in Explanation to section 10(35) and also to include payments by any mode. (Effective from Assessment Year 2021-22);
- Section 196C of the Act, being tax on Income from foreign currency bonds or shares of Indian company and Section 196D in relation to Income of Foreign Institutional Investors from securities amended to remove exclusion provided to dividend under section 115-O and also to include payments by any mode. (Effective from Assessment Year 2021-22);
- Section 201 of the Act relating to interest on late payment of TDS, now provides extra time for passing an Order for treating a person in default, when correction statement is filed. The purpose stated in the budget speech is for prevention of fraud;
- Section 204 of the Act defines the meaning of the person paying to include in Clause (v) in the case of a person not resident in India, the person himself or any person authorised by such person or the agent of such person in India including any person treated as an agent under section 163;
- TDS continues to be deducted by the Individuals/HUF having turnover of Rs. 1,00,00,000/- or more during the previous financial year under Section 194A, 194C, 194H, 194I, 194J and 206C, despite of them not liable for getting accounts audited under Section 44AB.

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# TCS Amendments (Liberalised Scheme Remittances)

- ▶ Section 206(1G) is binding on AD who receives an amount from a buyer for remittance out of India under the Liberalised Remittance Scheme of the Reserve Bank of India;
- ▶ LRS scheme is applicable to resident individuals;
- ▶ A 'person resident in India' is defined in Section 2(v) of FEMA, 1999 as :
  - ▶ (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-
    - ▶ (A) a person who has gone out of India or who stays outside India, in either case-
      - ▶ (a) for or on taking up employment outside India, or
      - ▶ (b) for carrying on outside India a business or vocation outside India, or
      - ▶ (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
    - ▶ (B) a person who has come to or stays in India, in either case, otherwise than-
      - ▶ (a) for or on taking up employment in India, or
      - ▶ (b) for carrying on in India a business or vocation in India, or
      - ▶ (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
  - ▶ (ii) any person or body corporate registered or incorporated in India,
  - ▶ (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
  - ▶ (iv) an office, branch or agency outside India owned or controlled by a person resident in India.
- ▶ The section is binding on AD for remittance under LRS, he is bound to observe the definitions under LRS only, but not under the IT Act.

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# TCS on Liberalised Remittance Scheme

- What is LRS – Regulatory landscape
- TCS to be collected by
  - an Authorised Dealer (AD) on aggregate remittances under the LRS exceeding Rs. 7 lakh in a financial year
    - 0.5% for remittance for overseas education from loan obtained from a bank or notified financial institution
    - @ 5% for other LRS purposes
  - Seller of overseas tour programme package 5% for remittance towards overseas tour programme package right from Re. 1

*Exemption given, if the buyer is,—*

- (i) liable to deduct tax at source under any other provision of this Act and has deducted such amount;*
- (ii) the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority as defined in the Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.*

A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS @ 5% and @10% in non-PAN/Aadhaar cases (No Basic Exemption Limits)

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# TCS Amendments (Liberalised Scheme Remittances)

- ▶ Section 5 of the FEMA, persons resident in India, resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both;
- ▶ Current Account transactions permitted under LRS (some examples);
  - ▶ Private visits to any country (except Nepal and Bhutan)
  - ▶ Gift or donation
  - ▶ Going abroad for employment
  - ▶ Emigration
  - ▶ Maintenance of close relatives abroad
  - ▶ Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up
  - ▶ Expenses in connection with medical treatment abroad
  - ▶ Studies abroad
  - ▶ Any other current account transaction which is not covered under the definition of current account in FEMA 1999.

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# TCS Amendments (Liberalised Scheme Remittances)

- ▶ The permissible capital account transactions by an individual under LRS are:
  - ▶ opening of foreign currency account abroad with a bank;
  - ▶ purchase of property abroad;
  - ▶ making investments abroad- acquisition and holding shares of both listed and unlisted overseas company or debt instruments;
  - ▶ acquisition of qualification shares of an overseas company for holding the post of Director;
  - ▶ acquisition of shares of a foreign company towards professional services rendered or in lieu of Director's remuneration;
  - ▶ investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;
  - ▶ setting up Wholly Owned Subsidiaries and Joint Ventures (with effect from August 05, 2013) outside India for bonafide business subject to the terms & conditions stipulated in **Notification No FEMA.263/ RB-2013 dated March 5, 2013**;
  - ▶ extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives.

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# TCS on Sale of Goods [Section 206C(1H)]

Every person who is a seller, whose total sales, gross receipts or turnover from the business carried on by him exceed ten crore rupees during the financial year immediately preceding the financial year, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India



at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax, 1% in the absence of PAN or Adhar:



Buyer is a person who purchases any goods but does not include: the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or  
(B) a local authority as defined in the Explanation to clause (20) of section 10; or  
(C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein;

If the buyer is liable to deduct TDS under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount, then no TDS under this Section

# TCS on Sale of Goods [Section 206C(1H)]

- (1-I) *If any difficulty arises in giving effect to the provisions of sub-section (1G) or sub-section (1H), the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty.*
- (1J) *Every guideline issued by the Board under sub-section (1-I) shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect the sum.]*
- Tax is to be collected at the time of receipt of the sale consideration from the buyer and not at the time of entering into sale transaction;
- It will be irrelevant as to whether the amount of Rs. 50 lakhs pertain to sales made in one year or sales made in number of earlier years;
- The transactions of Import and Export are now out of the purview of application of this sub-section;
- Scope of TCS to purchase of all goods as against certain specified goods prior to this sub-section;
- No clarity as regards to the inclusion of GST is sales or not, but benefit of Circular No. 76/50/2018-GST issued by CBIC will come to rescue is a question. Clarification required;
- Lead to enormous amount of additional procedural burden to collect TCS;

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## Certain clarifications vide Circular No. 17/2020 dated 29<sup>th</sup> September, 2020

Section 206C(1H) will not be applicable for transactions in securities and commodities traded through recognized stock exchanges or cleared and settled by recognized Clearing Corporation including clearing corporation located in IFSC;

Section 206C(1H) will also not be applicable for electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation of CERC;

Receipt of Sale Consideration from a Dealer of Car would be covered by the provision. Also in case of sale of vehicle to consumer which is less than Rs 10 Lakhs also covered if aggregate exceeds limit specified;

Sale of Vehicle to consumer where sale price of vehicle is more than Rs. 10 Lakhs is not covered by this provision;

No Adjustments for Sales Return or Discount or indirect taxes including GST to be done.

Fuel supplied to Non-Resident Airlines, the provisions shall not apply.

# Circular No. 11 of 2021 dated 21st June, 2021

## **New Section 206AB Special Provision for TDS for non-filers of Income Tax Returns**

- Higher rates specified for Non-filers of Income Tax Returns.
- Not Applicable where TDS deducted u/s 192, 192A, 194B, 194BB, 194LBC or 194N.
- Not applicable to Non-Resident who does not have PAN in India.

### • **Rates - Higher of the following:**

- Rates u/s 206AA (applicable where PAN not furnished)

OR

- Rates u/s 206AB, which is higher of:

- Twice the rate specified in the relevant provision; or
- Twice the rates in force; or
- 5%

### • **Specified Person (Deductee):**

- Not filed ROI in immediately preceding 2 PYs of such Previous Years
- Time limit u/s 139(1) has expired for such PYs
- Aggregate of TDS & TCS in his case  $\geq$  Rs. 50,000 in each of these PYs

► Applicable from 1<sup>st</sup> July, 2021

► Compiled by CA Avinash Rawani

# Circular No. 11 of 2021 dated 21st June, 2021

## **New Section 206CCA Special Provision for TCS for non-filers of Income Tax Returns**

- Higher rates specified for Non-filers of Income Tax Returns.
- Not Applicable to Non-Resident who does not have PAN in India.

### • **Rates - Higher of the following:**

- Rates u/s 206CC (applicable where PAN not furnished)

OR

- Rates u/s 206CCA, which is higher of:

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

### • **Specified Person (Deductee):**

- Not filed ROI in immediately preceding 2 PYs of such Previous Years
- Time limit u/s 139(1) has expired for such PYs
- Aggregate of TDS & TCS in his case  $\geq$  Rs. 50,000 in each of these PYs

► Applicable from 1<sup>st</sup> July, 2021

► Compiled by CA Avinash Rawani

# Circular No. 10/2022 dated 17<sup>th</sup> May, 2022

- ❖ Circular regarding use of functionality under section 206AB and 206CCA of the Income-tax Act, 1961 for the FY 2022-23;
- ❖ Finance Act 2022 has brought about the following changes in the above mentioned provisions, i.e. section 206AB and section 206CCA of the Act with effect from 1st April, 2022
  - ❖ The provision of higher TDS under section 206AB is not applicable on tax to be deducted under sections 194-IA, 194-1B and 194M. This is in addition to already existing provision of its non-applicability on tax to be deducted under sections 192, 192A, 194B, 194BB, 194LB and 194N;
  - ❖ The definition of specified person has been amended in both section 206AB and section 206CCA. Now "specified person" means a person who satisfies both the following conditions:
    - ❖ (a) He has not furnished the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted/collected . The previous year to be counted is required to be the one whose return filing date under sub-section ( I) of section 139 has expired.
    - ❖ (b) Aggregate of tax deducted at source and tax collected at source is rupees fifty thousand or more in that previous year.
- ❖ Further, it has been provided that provisions of section 206AB will not apply in case of deduction of tax on transfer of virtual digital asset (VDA) under section 1945 of the Act to a person being an individual or HUF, whose sales, gross receipts or turnover from the business carried on by him or profession exercised by him does not exceed one crore rupees in case of business or fifty lakh rupees in case of profession, during the financial year immediately preceding the financial year in which such VDA is transferred or if such person does not have any income under the head " Profit and gains of business or profession

# Circular No. 10/2022 dated 17<sup>th</sup> May, 2022

- The logic of converting two years into one year has been explained in the said circular
  - A list of specified persons is prepared as on the start of the financial year 2022-23, taking previous year 2020-21 as the relevant previous year;
  - List contains names of the taxpayers who did not file ROI for the AY 2021-22 and have aggregate of TDS and TCS of fifty thousand rupees or more in the previous year 2020-21;
  - During the financial year 2022-23, 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 the assessment year 2021-22 during the financial year 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing of the valid return of income during the financial year 2022-23;
  - If any specified person files a valid return of income (filed & verified) for the assessment year 2022-23, his name would be removed from the list of specified persons. This would be done on the due date for filing of the return of income for A Y 2022-23 or on the date of actual filing of valid return (filed & verified), whichever is later;
  - If the aggregate of TDS and TCS, in the case of a specified person, in the previous year 2021-22 is less than fifty thousand rupees, his name would be removed from the list of specified persons. This would be done on the first due date under sub-section (l) of section 139 of the Act falling in the financial year 2022-23. For the financial year 2022-23 this due date is 31<sup>st</sup> July 2022.;
  - Belated and revised TCS & TDS returns of the relevant financial year filed during the financial year 2022-23 would also be considered for removing persons from the list of specified persons on a regular basis

# Circular No. 10/2022 dated 17<sup>th</sup> May, 2022

- 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;
- The list would be drawn afresh at the start of each financial year and the above process would have to be repeated;
- As per the provisos of Section 206AB & 206CCA, the specified person shall not include a non-resident who does not have a permanent establishment (PE) in India;
- Tax Deductors & Collectors are expected to carry out necessary due diligence in respect of nonresidents about the applicability of section 206AB and section 206CCA on them;
- Circular no 10 of 2022 was issued on 17<sup>th</sup> June 2022 . It was seen that even though this user friendly functionality has been provided to tax deductors/collectors, and explained through a circular, some of these deductors/collectors were asking the deductee/collectee to produce evidences of their filing of return of income. It may be again highlighted that this functionality has been developed to ease compliance for tax deductors/collectors. Asking the deductee/collectee to file evidence of furnishing of their return defeat the purpose of this taxpayer friendly measure.
- All tax deductors/collectors are requested to make note of this circular for compliance.

# Circular No. 04/2022 dated 15<sup>th</sup> March, 2022

- ❖ Circular has 127 pages and can be accessed through <https://www.incometaxindia.gov.in/communications/circular/circular-04-2022.pdf>
- ❖ Salary, Perquisites along with method how to Compute tax on Income from Salaries given in the said Circular;
- ❖ The present/chosen employer will be required to deduct tax at source on the aggregate amount of salary (including salary received from the former or other employer).
- ❖ Relief When Salary Paid in Arrear or Advance;
- ❖ The DDO shall also ensure furnishing of the evidence or particulars in Form No.12BB in respect of deduction of interest as specified in Rule 26C read with section 192 (21);
- ❖ Method of Computation of Salary given;
- ❖ Method of Computation of Perquisites given;
- ❖ Examples also along with computation tables given for references;
- ❖ Formats of Form 16, Form 12BB etc. available for references;
- ❖ References of Circulars relating to Income Tax for Deduction at Sources are readily made available;
- ❖ Procedure and timelines to pay TDS, upload Salary returns

## TDS on EPF effective 1<sup>st</sup> April, 2022 G.S.R. 604(E) dated 31<sup>st</sup> August, 2021.

- ❑ Applicable to all EPF subscribers and shall come on force from 1<sup>st</sup> April, 2022;
- ❑ Effective date shall be 1<sup>st</sup> April, 2022 or final settlement transfers, whichever is later;
- ❑ In all other cases where there are no final transfers, TDS will be deducted on date of credit of interest;
- ❑ Taxable contribution part will be subject to separate accounting of interest and maintenance as the closing balance part in the current accounting system;
- ❑ IF PF account is linked with PAN then TDS would be 10% otherwise Section 206AA will apply;
- ❑ Rate of TDS will be the same in case of death of the PF Account holder;
- ❑ In case of Non-resident PF Account holder, the TDS rate shall be 30% under Section 195;
- ❑ TDS shall be paid under Section 194A of the Income Tax Act, 1961.



Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- ▶ Guidelines for removal of difficulties under section 194R(2) of the Income tax Act, 1961
  - ▶ It is not necessary for the payer/deductor to check the taxability of the sum in the hands of the payee under Section 28(iv) and highlights that the sum could be taxable under any other section like Section 41(1).
  - ▶ CBDT clearly distinguishes the principles governing TDS under Section 195 from the TDS under Section 194R and places reliance on SC ruling in PILCOM [TS-219-SC-2020] where it was held that where TDS at a specific rate is provided for, there is no need to see the taxability or the rate of taxability in the hands of the non-resident.
- ▶ Cash or Kind or Both – All Covered
  - ▶ It is made clear that the benefit or perquisite covered under Section 194R can be either in cash or in kind or partly in cash and partly in kind. Thus, clarifies the legal position on expanse of Section 194R on benefit or perquisite paid in cash.
- ▶ Capital Assets – Covered
  - ▶ The nature of asset given as benefit or perquisite is not relevant and even capital assets given as benefit or perquisite are covered within the scope of Section 194R. CBDT categorically uses the phrase 'of whatever nature' on benefit or perquisite for fastening TDS liability on the payer.

Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- ▶ Sales Discount, Cash Discount & Rebates – Spared
  - ▶ CBDT provides a breather on sales discount, cash discount and rebates allowed to customer by excluding them from the purview of Section 194R as their inclusion would put the seller into difficulties. CBDT does state that these are benefit or perquisite though related to sale/purchase.
- ▶ Incentives other than Sales Discount, Cash Discount & Rebates – Covered
  - ▶ Section 194R shall apply to seller giving incentives, other than discount or rebate, which are in cash or kind e.g., car, TV, computers, gold coin, mobile phone, sponsored trip, free ticket, medicine samples to medical practitioners. It is noteworthy that the list provided by the CBDT is not an exhaustive but only illustrative.
- ▶ User of Benefits or Perquisites – Not Relevant
  - ▶ Section 194R shall cover benefits or perquisites even where that may be used by owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession.
- ▶ For Hospitals & Doctors Receiving Samples
  - ▶ CBDT clarifies that in case of doctors receiving free samples of medicines while employed in a hospital, Section 194R would apply on distribution of free samples to the hospital. The hospital as an employer may treat such samples as taxable perquisite for employees and deduct tax under Section 192. In such cases, the threshold of Rs.20,000/- has to be seen with respect to the hospital.

▶ Compiled by CA Avinash Rawani

Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- For Hospitals & Doctors Receiving Samples [Contd]
  - For doctors working as consultants with a hospital and receiving free samples, TDS would ideally apply on hospital first which in turn would require to deduct tax under Section 194R with regard to consultant doctors. To remove this difficulty, CBDT clarifies that as an alternative, the original benefit or perquisite provider may directly deduct tax under Section 194R with regard to the consultant doctor as a recipient.
  - Section 194R shall not apply if the benefit or perquisite is provided to a Government entity, like Government hospital, not carrying on business or profession.
- On Valuation
  - The general rule is that valuation of benefit or perquisite shall be based on the fair market value with following exceptions:
    - Provider purchased it before providing it - purchase price
    - Provider manufactured it – price charged to customers (Value shall be exclusive of GST)
- For Social Media Influencers
  - Benefit or perquisite being a product given to the social media influencer which is returned to the provider after using it for the purpose of services provided by the influencer shall not be subject to TDS. Thus, the products retained by the influencer shall be subjected to TDS.

Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- On Reimbursement of Out-of-Pocket Expenses
  - Ordinarily, the expenditure incurred by a consultant is his business expenditure deductible against his income received from the client. Where the consultant incurs travel expenditure which is paid by the client, it is a benefit or perquisite provided the client to the consultant.
  - Applicability of Section 194R would depend on the name in which invoice for out-of-pocket expenses is made. If invoice is in the name of the client, paid by the consultant and reimbursed by the client then such reimbursement would not attract TDS.
  - If the invoice is not in the name of the client and the payment is made by the client directly or is reimbursed to the consultant then it is benefit or perquisite provided by the client to the consultant on which Section 194R applies.
- For Dealers or Business Conference
  - The expenditure incurred on Dealers' Conference would not be subject to TDS if held with the prime object to educate dealers/customers about any of the following or similar aspects
    - new product being launched, discussion as to how the product is better than others, obtaining orders from dealers/customers, teaching sales techniques to dealers/customers, addressing queries of the dealers/customers, reconciliation of accounts with dealers/customers
    - *Exception to this rule is that such Conference must not be in the nature of incentives/ benefits to select dealers/ customers who have achieved particular targets.*

# Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- Applicability of TDS under Section 194R
  - (i) attributable to leisure trip or leisure component, even if it is incidental to the dealer/business conference.
  - (ii) incurred for family members accompanying the person attending dealer/business conference
  - (iii) on participants of dealer/business conferences for days which are on account of prior stay or overstay beyond the dates of such conference.
- Where Cash Component is Insufficient
  - CBDT clarifies on a peculiar situation where a person is providing benefit in kind and is required to ensure that tax required to be deducted has been paid by the recipient where cash is not sufficient to meet TDS
  - The deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that tax on the benefit/perquisite has been deposited.
  - This requires to be reported in TDS return along with challan number for which Form 26Q has included provisions for reporting such transactions.
  - Alternatively, the benefit provider may deduct the tax and deposit with the Government where TDS should be after taking into account the fact the tax paid as TDS is also a benefit under Section 194R. This needs to be reflected in Form 26Q as tax deducted on benefit provided.

■ Compiled by CA Avinash Rawani

# Circular No. 12/2022 dt. 16<sup>th</sup> June, 2022

## [Section 194R] [Contd]

- Calculation of Rs.20,000/- threshold for FY 2022-23;
  - Section 194R comes into effect on Jul 1, 2022. Thus, CBDT clarifies on how this limit of twenty thousand is to be computed for FY 2022-23.
  - Calculation of value or aggregate of value of the benefit or perquisite triggering TDS shall be counted from April, 1, 2022.
  - If the value of the benefit or perquisite provided or likely to be provided to a resident exceeds Rs.20,000/- during FY 2022-23 (including the first 3 months), TDS would apply on any benefit or perquisite provided on or after Jul 1, 2022.
  - CBDT amply clarifies that benefit or perquisite provided on or before Jun 30, 2022, shall not be subjected to TDS under Section 194R.

# Compliance Check for Section 206AB & 206CCA

“**Compliance Check for Section 206AB & 206CCA**” functionality enables tax deductors/collectors to verify if a person is a “Specified Person” as defined in Section 206AB & 206CCA. This functionality is available to the Principal Officers of the registered TAN at the home page of Reporting Portal (After Login).

## Registration of Tax Deductors/Collectors on Reporting Portal

To access the “Compliance Check for Section 206AB & 206CCA” functionality, tax deductors/collectors need to register through TAN on the Reporting Portal of Income-tax Department. Following steps may be followed for registration of TAN on reporting portal,

- Step: 1** Go to Reporting Portal at URL <https://report.insight.gov.in>.
- Step: 2** On the left sidebar of the Reporting Portal homepage, click on **Register** button.
- Step: 3** User is redirected to the e-filing login page. Or
- Step: 4** Directly navigated to e-filing portal through <http://www.incometax.gov.in/>
- Step: 5** Log in to e-filing using e-filing login credential of TAN.
- Step: 6** Under “Pending Actions”, select “Reporting Portal”.
- Step: 7** After being redirected to the Reporting portal, select **New Registration** option and click **Continue**.
- Step: 8** On the next screen, select the Form type as **Compliance Check (Tax Deductor & Collector)**. The Entity Category will be displayed based on the category in which TAN is registered at e-filing. Click **Continue** to navigate to entity details page.
- Step: 9** Enter relevant entity details on entity details page and click on “Add Principal Officer” button to add Principal Officer.
- Step: 10** Enter Principal Officer details on the Principal Officer Details page.
- Step: 11** If more users such as Nodal Officer, Alternate Nodal Officer and other users are to be registered at this instance, adding the details of such users can be continued, otherwise the same can be done after registration also.
- Step: 12** Click on **Preview** button to view the entered entity and principal officer details.
- Step: 13** Click on **Submit** button to submit the registration request.
- Step: 14** Acknowledgement receipt of registration request is provided through portal and the same will also be shared through an email notification to the Principal Officer.
- Step: 15** Once the registration request is approved by Income tax Department, email notification will be shared with the Principal Officer along with ITDREIN details and login credentials.

# Compliance Check for Section 206AB & 206CCA



## Compliance Check for Section 206AB & 206CCA Quick Reference Guide Version 1.0 (June 2021)



### Accessing the functionality on Reporting Portal – by Principal Officer

- Step: 1** Go to Reporting Portal at URL <https://report.insight.gov.in>.
- Step: 2** On the left sidebar of the Reporting Portal homepage, click the Login button.
- Step: 3** Enter the required details (of Principal Officer) in the respective fields (PAN and Password as received in the email or updated password) and click Login to continue.
- Step: 4** If Principal Officer's PAN is registered for multiple Forms & ITDREIN, he/she needs to select Form type as Compliance Check (Tax Deductor & Collector) and associated ITDREINs from the drop-down.
- Step: 5** After successfully logging in, the home page of Reporting Portal appears.
- Step: 6** Click on Compliance Check for Section 206AB & 206CCA link provided as shortcut on left panel.



# Compliance Check for Section 206AB & 206CCA

## Compliance Check for Section 206AB & 206CCA

Upon clicking **Compliance Check for Section 206AB & 206CCA** at home page, the compliance check functionality page appears. Through the functionality, tax deductors or collectors can verify if any person (PAN) is a "Specified Person" as defined in Section 206AB & 206CCA.

The same can be done in two modes:

- **PAN Search:** To verify for single PAN
- **Bulk Search:** To verify for PANs in bulk

### PAN Search (Single PAN Search)

**Step 1:** Select **PAN Search** tab under **Compliance Check for Section 206AB & 206CCA** functionality.

**Step 2:** Enter valid PAN & captcha code and click **Search**.

Following Output result will be displayed upon entering a valid PAN & captcha code. Output result will not be shown if Invalid PAN is entered.

### Output Result-

- **Financial Year:** Current Financial Year
- **PAN:** As provided in the input.
- **Name:** Masked name of the Person (as per PAN).
- **PAN Allotment date:** Date of allotment of PAN.
- **PAN-Aadhaar Link Status:** Status of PAN-Aadhaar linking for individual PAN holders as on date. The response options are Linked (PAN and Aadhaar are linked), Not Linked (PAN & Aadhaar are not linked), Exempt (PAN is exempted from PAN-Aadhaar linking requirements as per Department of Revenue Notification No. 37/2017 dated 11<sup>th</sup> May 2017) or Not-Applicable (PAN belongs to non-individual person).
- **Specified Person u/s 206AB & 206CCA:** The response options are Yes (PAN is a specified person as per section 206AB/206CCA as on date) or No (PAN is not a specified person as per section 206AB/206CCA as on date).

# Compliance Check for Section 206AB & 206CCA



## Compliance Check for Section 206AB & 206CCA Quick Reference Guide Version 1.0 (June 2021)



### Bulk Search

**Step 1:** Select “Bulk Search” tab.

**Step 2:** Download the CSV Template by clicking on “Download CSV template” button.

**Step 3:** Fill the CSV with PANs for which “Specified Person” status is required. (Provided PANs should be valid PANs and count of PANs should not be more than 10,000).

**Step 4:** Upload the CSV by clicking on “Upload CSV” button.

**Step 5:** Uploaded file will start reflecting with Uploaded status. The status will be as follows:

- **Uploaded** - The CSV has been uploaded and pending for processing.
- **Available** - Uploaded CSV has been processed and results are ready for download.
- **Downloaded** - The user has downloaded the output results CSV.
- **Link Expired** - Download link has been expired.

**Step 6:** Download the output result CSV once status is available by clicking on **Available** link.

**Step 7:** After downloading the file, the status will change to **Downloaded** and after 24 hours of availability of the file, download link will expire and status will change to **Link Expired**.

### Output Result (CSV):

Output result CSV file will have following details:

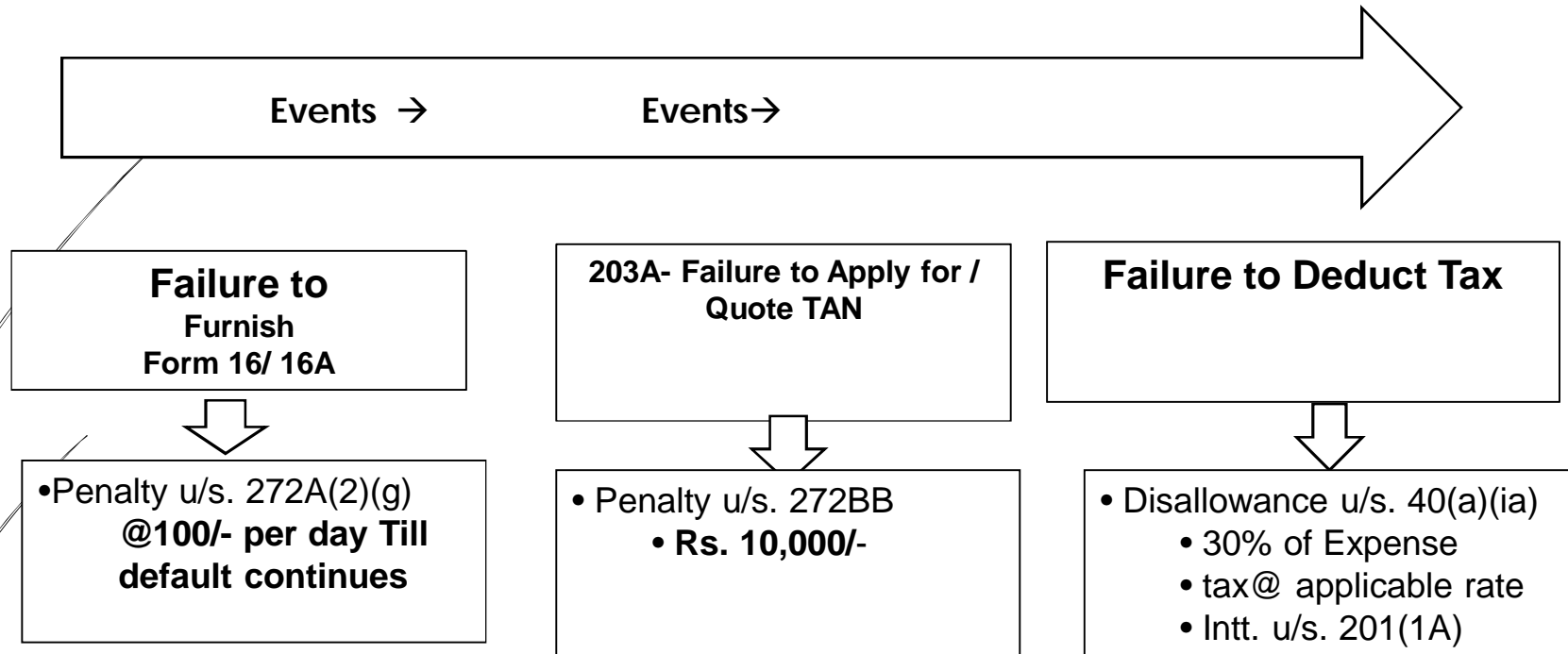
- **Financial Year:** Current Financial Year
- **PAN:** As provided in the input. Status shall be “Invalid PAN” if provided PAN does not exist.
- **Name:** Masked name of the Person (as per PAN).
- **PAN Allotment date:** Date of allotment of PAN.
- **PAN-Aadhaar Link Status:** Status of PAN-Aadhaar linking for individual PAN holders as on date. The response options are Linked (PAN and Aadhaar are linked), Not Linked (PAN & Aadhaar are not linked), Exempt (PAN is exempted from PAN-Aadhaar linking requirements as per Department of Revenue Notification No. 37/2017 dated 11<sup>th</sup> May 2017) or Not-Applicable (PAN belongs to non-individual person).
- **Specified Person u/s 206AB & 206CCA:** The response options are Yes (PAN is a specified person as per section 206AB/206CCA as on date) or No (PAN is not a specified person as per section 206AB/206CCA as on date).

Output will also provide the date on which the “Specified Person” status as per section 206AB and 206CCA is determined.

These report generated, should be kept as record for future verification as the same may not be available for permanent verification

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# TDS NON COMPLIANCE AT A GLANCE



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# CONSEQUENCES OF NON COMPLIANCE

Default	Section	Consequence	Quantum
Failure to deduct/to deduct at rates prescribed	201(1)	Demand	Amount of tax deductible
	201(1A)	Interest	@1% pm of tax deductible
	271C	Penalty	Equal to amount of tax
Failure to deposit tax deducted at source	201(1)	Demand	Amount of tax not deposited
	201(1A)	Interest	@1.5% pm of tax deducted
	276B	Prosecution	Rigorous imprisonment from 3 months to seven years plus fine
Failure/delay in furnishing TDS Statements	234E	Late Fee	Rs. 200/- for every day of delay but not exceeding tax deductible
	271H	Penalty	Between Rs. ten thousand to Rs. one lacs
	272A(2)(k)	Penalty	Rs. 100/- for every day of delay but not exceeding tax deductible
Failure to deliver declaration in form 15G/15H to CIT	272A(2)(f)	Penalty	Rs. 100/- for every day of delay but not exceeding tax deductible
Failure to issue TDS Certificates	272A(2)(g)	Penalty	Rs. 100/- for every day of delay but not exceeding tax deductible
Failure to issue statement of perquisite or profit in lieu of salary	272A(2)(i)	Penalty	Rs. 100/- for every day of delay but not exceeding tax deductible
Failure to apply/quote TAN	272BB	Penalty	Rs. Ten Thousand
Failure to mention the PAN of the deductee in TDS Statements/Certificates	272B	Penalty	Rs. Ten Thousand

Note: Apart from the above, the failure to deduct /pay also causes:-  
 (a) Disallowance of expenditure u/s 40(a)(ia)  
 (b) Creation of a charge on the assets of the person u/s 201(2)

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# ALWAYS CHECK, BEFORE YOU

## CLICK

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# Thanks

- Any Questions
- Thank You

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