

F. No. 370133/3/2022-TPL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(TPL Division)

New Delhi, Dated 17th May, 2022

Subject: Circular regarding use of functionality under section 206AB and 206CCA of the Income-tax Act, 1961 - reg.

Finance Act, 2021 inserted two new sections 206AB and 206CCA in the Income-tax Act 1961 (hereinafter referred to as "the Act") which took effect from 1st day of July, 2021. These sections (as they stood prior to its amendment by the Finance Act 2022) mandated tax deduction (section 206AB) or tax collection (section 206CCA) at higher rate in case of certain non-filers (specified persons) with respect to tax deductions (other than under sections 192, 192A, 194B, 194BB, 194LBC and 194N) and tax collections. Higher rate was twice the prescribed rate or 5%, whichever is higher. Specified person meant a person who satisfies both the following conditions: -

- (i) He has not filed the returns of income for both of the two assessment years relevant to the two previous years immediately before the previous year in which tax is required to be deducted/collected. Two previous years to be counted are required to be those whose return filing date under sub-section (1) of section 139 has expired.
- (ii) Aggregate of tax deducted at source and tax collected at source is rupees fifty thousand or more in each of these two previous years.

2. It can be seen that the tax deductor or the tax collector was required to do a due diligence of satisfying himself if the deductee or the collectee was a specified person? In order to ease this compliance burden the Income-tax Department came out with functionality "Compliance Check for Section 206AB & 206CCA", which was made available through reporting portal of the Income-tax Department. It enabled the tax deductor or the collector to feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee or collectee. The functionality then gave a response if such deductee or collectee was a specified person. For PAN Search, response was visible on the screen which could be downloaded in the PDF format. For Bulk Search, response was in the form of downloadable file which could be kept for record. The logic of this functionality was explained through paragraph 3 of circular no 11 dated 21st June 2021.

3. 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:

(i) The provision of higher TDS under section 206AB is not applicable on tax to be deducted under sections 194-IA, 194-IB 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, 194LBC and 194N.

(ii) 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 (1) 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.

(iii) 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 194S of the Act to a person being an individual or Hindu undivided family, 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".

4. Thus it can be seen that now a person can become a specified person for default in one year instead of earlier provision of default in two years. Accordingly the logic of the functionality has been amended. The new logic for the current financial year is as under:

- 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 return of income for the assessment year 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 AY

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 (1) of section 139 of the Act falling in the financial year 2022-23. For the financial year 2022-23 this due date is 31st 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.

5. 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. To illustrate, let us assume that a deductor has 10,000 vendors that he deals with. He can use the functionality in the bulk search mode and can get the result of all these 10,000 PANs at one go. Let us assume that the functionality has shown that out of these 10,000 PANs, 5 PANs are specified persons for the purposes of sections 206AB and 206CCA of the Act. Now with respect of the remaining 9,995 PANs, 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 can be assured that these 9,995 PANs would remain outside the list of specified persons during that financial year. Thus, deductor need not check again with respect to these 9,995 PANs during that financial year. There are chances that the 5 PANs which are of specified persons may move out of the list during the financial year and for that there will be need to recheck at the time of making tax deduction or tax collection.

6. The list would be drawn afresh at the start of each financial year and the above process would have to be repeated. For example, at the beginning of the financial year 2023-24 a fresh list would be prepared with previous year 2021-22 as the relevant previous year. Then, no name would be added to the list of specified persons during the financial year and only name would be removed based on the logic given in the 3rd to 6th bullets of paragraph 4 above.

7. It may be noted that 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. Since the functionality does not have the visibility of non-resident having PE in India, there is likelihood that non-resident having PE in India may not get reflected in this list. Tax Deductors & Collectors are expected to carry out necessary due diligence in respect of non-residents about the applicability of section 206AB and section 206CCA on them.

8. Circular no 11 of 2021 was issued on 21st June 2021. 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.

9. Circular no 11 of 2021 is modified to the extent of what is contained in this circular.

Ankit Jain
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17.05.2022

Under Secretary (TPL)-III

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