



# HIGHER RATE OF TDS/TCS ON NON-FILERS

***Sec 206AB & 206CCA***

*(PROVISIONS AS PER THE FINANCE ACT, 2021)*

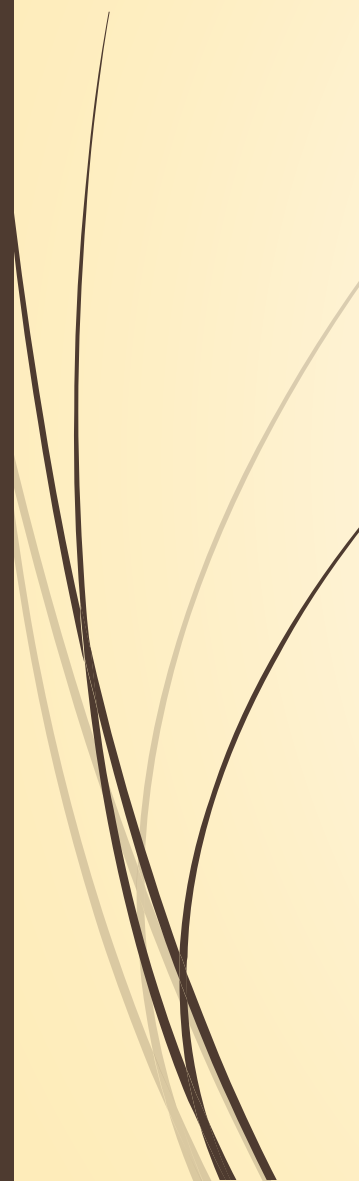

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# INTRODUCTION



Only **1% of the Indian population pays income tax and declares earnings** above the non-taxable income, inspite of having ample of income.

On a constant effort of addressing tax evasion, the Government, to ensure filing of returns and receive the actual tax revenue to its coffers, has chosen to impose a higher rate of withholding on gross income.

Finance Act, 2021 inserted two new sections 206AB and 206CCA which take effect from 1<sup>st</sup> of July, 2021, resulting into higher rate of TDS and TCS respectively.

# IMPORTANCE

India is losing around ₹ **75,000 crore in taxes every year**. The social impact of the lost tax is not acceptable.

The insertion of these sections is a recovery mechanism **designed to recover the full tax due from assessee**s who have not filed ITRs over the previous 2 years.

**TDS rates are generally lower** when compared with the actual tax rates and in most of the cases, there would be **tax payable by the assessee over and above the TDS deducted**.

In the event of returns not being filed, the Government would stand to lose tax revenue in such cases.

Given the **success of Section 206AA and 206CC** which provide for higher TDS for non-furnishing of PAN, similar provisions have been inserted to **encourage assessee to file tax returns** and **minimize tax losses** to the government.

# WHAT DOES THE SECTION AIM FOR ?

The newly inserted sections mandate tax deduction (section 206AB) or tax collection (section 206CCA) at **higher rate** in case of certain non-filers of return of income (specified persons) with respect to certain tax deductions and tax collections.

Higher rate for TDS

## HIGHER OF THE FOLLOWING:

Twice the rate provided in the respective section

Twice the rates in force

5%

Higher rate for TCS

## HIGHER OF THE FOLLOWING:

Twice the rate provided in the respective section

5%

- Let's consider an example, where Mr. B, in receipt of professional services from Mr. A, a resident individual, is liable to deduct tax as per Sec 194J. In case Mr. A is a specified person\*, the rate of TDS shall be determined as follows:

## DETERMINING HIGHER RATE AS PER SEC 206AB

Twice the rate provided in the respective section	20%
Twice the rates in force	NA
Standard Rate	5%
Rate at which TDS is to be deducted (Higher of the above)	20%

*\*Specified person is explained in further slides*

# WHO IS A SPECIFIED PERSON?

Specified person means a person who gets captured under **both** of the following:

Has not filed the returns of income for **both** of the two AYs relevant to the two PYs immediately before the PY in which tax is required to be deducted/collected.

- ***Two previous years are required to be those whose return filing date u/s 139(1) has expired. Thus for FY 2021-22, relevant PY would be PY 2018-19 and 2019-20 (Clarified through circular No.11/2021)***

Aggregate of **TDS and TCS**  $\geq$  ₹ 50,000 in each of these two previous years.

- It is to be noted that liability of TDS and TCS of the specified person would be considered under the bracket of Rs.50,000

Further, a Non-Resident who does not have a PE is not covered u/s 206AB/206CCA, i.e., only a Non-Resident who has a PE in India will be subject to a higher TDS u/s 206AB/206CCA.

This is because, non-residents not having PE, who are **only in receipt of specific income** (dividend only, interest only, etc.) are not required to file ITRs (as per Sec 115A). Moreover, in case of non-residents, the tax withheld would be the total amount of tax that is payable under the Indian ITA.

# NON-APPLICABILITY OF SEC-206AB

Sec 206AB (Higher TDS on specified persons) shall not apply to the following:

Salary

Withdrawal of accumulated balance of RPF

Winnings from lotteries, crossword puzzles, card games

Winnings from horse races

Income with respect to investment in securitisation trust

TDS on cash withdrawals

# HIGHER TDS FOR NON-FURNISHING OF PAN

Section 206AA and 206CC provide for **higher rate of TDS** for **non-furnishing of PAN** i.e. **20%**.

As per sub-section (2) of both 206AB and 206CCA, where the assessee is a specified person and has not furnished his PAN, then the relevant rate would be the higher of:

- Rate determined as per Sec 206AA/Sec 206CC- for non-furnishing of PAN and
- Rate determined as per Sec 206AB/Sec 206CCA – for non-filing of ITR



# ILLUSTRATIONS

*Let's consider an example:*

Mr. B, in receipt of contract services from Mr. A, a resident individual, is liable to deduct tax as per Sec194C. In case Mr.A is a specified person and fails to furnish PAN, then the rate of TDS shall be determined as follows

## Step 1

### DETERMINING HIGHER RATE AS PER SEC 206AA

Rate specified in the respective section	1%
Twice the rates in force	NA
Standard Rate	20%
<b>Higher of the above</b>	<b>20%</b>

### DETERMINING HIGHER RATE AS PER SEC 206AB

Twice the rate provided in the respective section	2%
Twice the rates in force	NA
Standard Rate	5%
<b>Higher of the above</b>	<b>5%</b>

## Step 2

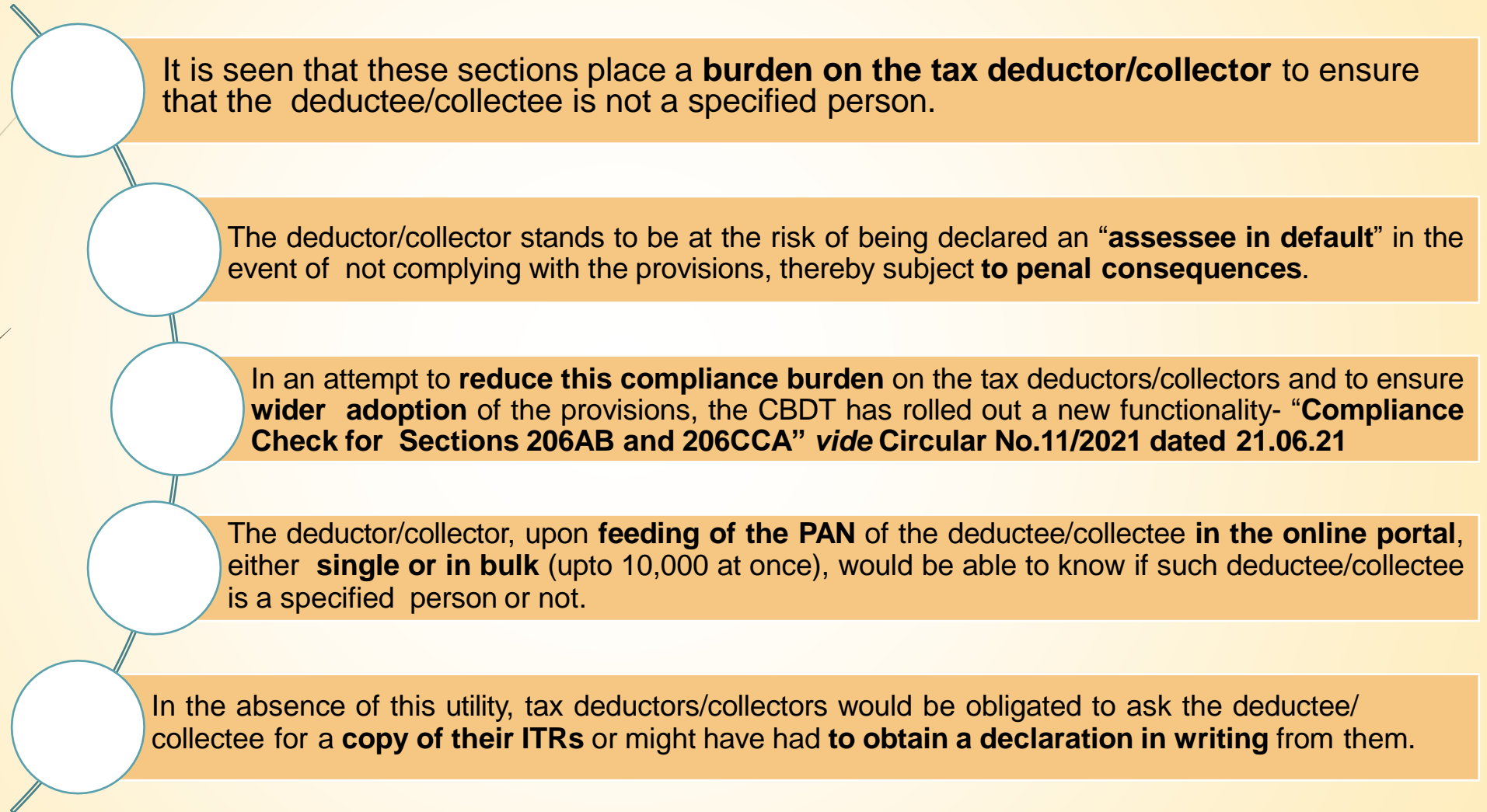
### DETERMINING HIGHER RATE

Higher Rate as per S. 206AA	20%
Higher Rate as per s. 206AB	5%
<b>Rate at which TDS is to be deducted (higher of the above)</b>	<b>20%</b>



# COMPLIANCE CHECK FUNCTIONALITY

## HOW IT WORKS



# FAQs

For FY 2021-22, when will the list be prepared? Which previous years would be considered?

The list of specified persons is prepared as on the start of the financial year. However, in this year, the application of the provision would be made effective from 01.07.21

For PY 2021-22, the relevant PY would be PY 18-19 and PY 19-20.



Once the list is prepared, will new names be added to the list during the FY?

No new names are added to the list. This reduces the burden of **checking for non-specified persons**, more than once in a FY.



Will names be removed from the list of specified person during the FY?

Yes, names may be removed from the list. Thus, for **specified persons alone, there will be need to recheck every time, tax deduction or collection is made.**

# FAQs

## When will names be removed from the list?

*(This question is answered w.r.t FY 2021-22, for better understanding)*

If a **valid return of income is filed** (filed & verified) for **PY 2018-19 or 2019-20** during the FY 2021-22\*, such person's name would be removed from the list of specified persons, as on the date of filing of such return.

If a **valid ITR is filed for PY 2020-21 (i.e., immediately preceding PY)**, such person's name would be removed from the list of specified persons, as on the due date of filing of such return or 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 PY 2020-21 < ₹50,000**, the name would be removed from the list of specified persons, as on the first due date u/s 139(1) falling in FY 2021-22. (typically 31<sup>st</sup> July, for current year it is 30<sup>th</sup> Sep because of the extension)

Belated and revised TCS & TDS returns of the relevant financial years filed during the financial year 2021-22 would also be considered for removing persons from the list of specified persons on a regular basis.

*\*Given that the time limit for filing returns for PY 2018-19 and 2019-20 u/s 139(1) and 139(4) would have lapsed, this would be possible only if return is filed, subsequent to a notice being issued u/s 142(1).*

# ILLUSTRATION-1

Note: In all cases, where a person is stated as “specified person” on non-filing of ITR return it is assumed the TDS/TCS liability was more than ₹50,000

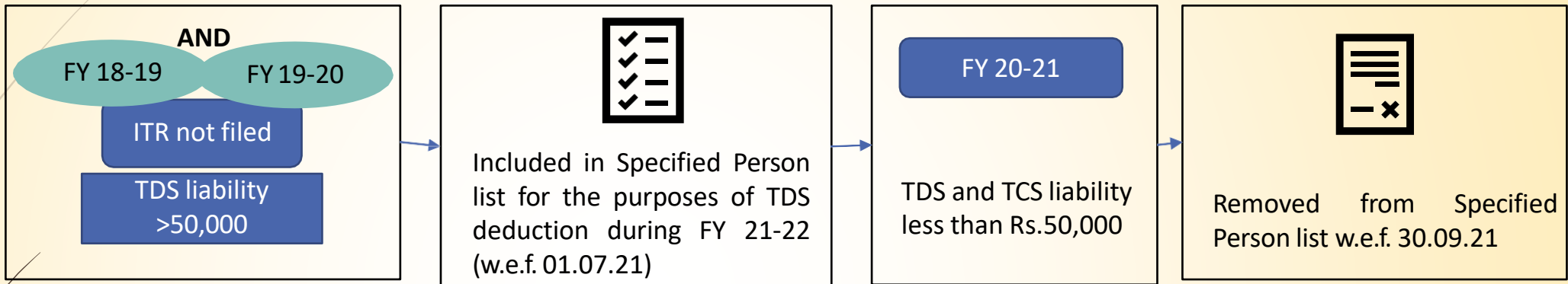
	Relevant PYs for the applicability of the section		Immediate PY	FY 2021-22- Whether a specified person?	Reason
	FY 2018-19	FY 2019-20	FY 2020-21		
1	ITR not filed	ITR not filed	ITR not filed	Specified person	ITR not filed in both relevant PY
2	ITR filed	ITR not filed	ITR not filed	Not a specified person	ITR filed in one relevant PY
3	ITR not filed	ITR not filed	ITR filed on 20.07.2021	Would be a specified person from applicability of the section i.e. 1 <sup>st</sup> July 2021 till 30 <sup>th</sup> September, 2021. Thereafter, the name shall be removed from the list	ITR filed for immediately preceding PY in current FY
4	ITR not filed + TDS < ₹50,000	ITR not filed + TDS > ₹50,000	ITR not filed	Not a specified person	TDS < ₹ 50,000 in one relevant PY

# CONTD...

Relevant PYS for the applicability of the section		Immediate PY		FY 2021-22- Whether a specified person?	Reason
	FY 2018-19	FY 2019-20	FY 2020-21		
5	ITR not filed	ITR not filed	ITR not filed + TDS < ₹50,000	Would be a specified person from applicability of the section i.e. 1 <sup>st</sup> July 2021 till 30 <sup>th</sup> September, 2021. Thereafter, the name shall be removed from the list.	TDS < ₹50,000 in immediately preceding PY
6	ITR filed in FY 2021-22	ITR not filed	ITR not filed	Would be a specified person till date of filing return for FY 18-19 in current FY	Valid return filed for relevant PY- hence no longer a specified person
7a	ITR not filed + TDS > ₹50,000	ITR not filed + TDS > ₹50,000	ITR not filed	Specified person	ITR not filed in both PY + TDS > ₹ 50,000 in both PY
7b	In scenario 7a above, if in FY 2021-22 a revised TDS return is filed, revising the TDS amount for FY 2018-19 to be < ₹50,000, then such person's name will be removed from the list				TDS < ₹ 50,000 in one relevant PY

# ILLUSTRATION - 2

A practical illustration of how the provision would apply in case of removal of person from the list of specified person is enumerated below. Assume assessee is in receipt of professional fees subject to TDS at 10% u/s 194J



TDS deduction would be as follows for FY 21-22:

From 01.07.2021 till 30.09.2021

TDS at 20% (twice of 10% or 5% whichever is higher)

From 01.10.2021 till 31.03.2021

TDS at 10%



# RESPONSIBILITY OF DEDUCTOR

To summarise, the deductor's responsibility w.r.t different deductees or collectees shall be as follows:

PERSONS	DEDUCTOR'S RESPONSIBILITY
Non specified person	<b>No need to check</b> , except at the beginning of each FY
Specified Persons	To be <b>rechecked every time</b> tax is deducted/collected at source during the FY
Non-Residents	Due diligence to be carried out to identify whether PE exists or not. Thus could be <b>difficult</b> given that the existence of a PE varies on a <b>case-to-case basis and is subject to litigations</b> .
Non-Residents, not having PE in India	To avoid unnecessary penalties/proceedings, it is advised to <b>obtain a declaration</b> to such effect.

Further, it will be crucial to check the status of specified persons, especially after **July 31, September 30 and November 30**. If returns of the immediately preceding PY (i.e. FY 20-21) are filed, then such names will be removed from the list on the due date of filing.





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*Thank You!*