Income Tax TDS at higher Rate [Section 206AB]

[with effect from 1st July 2021]

Finance Act 2021 has introduced a new Section 206AB in Income Tax Act, 1961 to provide for deduction of Income Tax at Source at higher rate than prescribed under respective section.

1.1 Provision enacted

Where Tax is required to be deducted at source [TDS], other than

a) TDS on Salary (Section 192);
b) TDS on Premature withdrawal from Employee PF (Section 192A);
c) TDS on Lottery (Section 194B);
d) TDS on Horse Riding (Section 194BB);
e) TDS on Income in respect of investment in Securitization Trust (Section 194LBC); or
f) TDS on cash withdrawal in excess of Rs.1 crore (Section 194N)

from any sum or income or amount paid or payable or credited to any person, other than non-resident who does not have a permanent establishment in India, and such person -

1) has not filed the Return of Income for both of the 2 [Two] immediately preceding Assessment Years whose time limit of filing return of income without late fee is already over; and
2) aggregate of tax deducted at source [TDS] and tax collected at source [TCS] is more than Rs.50,000/- in both Assessment Years referred above,

tax shall be deducted at the higher of the following rates -

(i) twice the rate specified in the relevant provision of the Act; or
(ii) twice the rate or rates in force; or
(iii) at the rate of 5%; or
(iv) if the person is not having PAN, at the rate of 20%.

1.2 Applicability of Provision

Accordingly, the TDS at higher rate is applicable for persons, other than non-resident who does not have a permanent establishment in India, -

(i) who has **not filed Income Tax Returns for both of 2 [Two] immediately preceding Finanacial Years** already ended whose time limit for submission of Income Tax Return without late fee is already over

AND

(ii) whose **TDS and TCS, during both of 2 [Two] immediately preceding Financial Years** already ended whose time limit for submission of Income Tax Return without late fee is already over, **EXCEEDS Rs.50,000/-**

Payment or Credit is to be done when	Check Finanacial Year[FY] / Assessment Year[AY]		
Due Date to file Income Tax Return for immediate previous year [FY 2020-21] is not over [e.g. 30-9-2021 or 30-11-2021]	FY	2019-20	2018-19
	AY	2020-21	2019-20
Due Date to file Income Tax Return for immediate previous year [FY 2020-21] is over.	FY	2020-21	2019-20
	AY	2021-22	2020-21

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1.3 Precautions to be taken by Deductor -

The Department has stated that an utility will be provided on its website to the deductors to check the fulfillment of the provisions of Section 206AB by deductees for proper deduction of Income Tax at source.
However, till today no such utility is made available by the Department.

Thus, many Banks, Companies and other Taxpayers liable to deduct Tax at source under various sections are asking for the Declaration regarding the applicability of Section 206AB and corresponding supportings such as copies of Return Acknowledgements and Form 26AS for TDS and TCS deducted for last 2-3 years.
As Income Tax Return Acknowledgements and Form 26AS being personal confidential documents, should not be asked for or insisted for its submission.

Similarly, TDS deduction on basis of declaration by Taxpayer can not relieve Deductor from its responsibility of correct deduction as per provisions of Income Tax Act, 1961.

So practically, till the utility is provided by the Department, the Deductor can ask for Declaration to safeguard himself from gross non-compliance of the provision.

1.4 Draft Declaration format

I/We <Taxpayer name> holding PAN <pan> hereby declare that **TDS** at the higher rate **as prescribed in Section 206AB** of Income Tax Act, 1961 is **NOT APPLICABLE** to me/us.

I/We hereby provide following details in support of non-applicability of Section 206AB.

Financial Year	Assessment Year	Submission of Income Tax Return		Whether TDS & TCS is more than Rs.50,000/-
		Acknowledgement No	Filing Date	
2020-21	2021-22	Due Date not yet over	- -	Yes / No
2019-20	2020-21			Yes / No
2018-19	2019-20			Yes / No

My PAN is linked with Aadhar. / Our PAN is not required to be linked with Aadhar.

I/We hereby declare that the information given above is true and correct and I/we will indemnify you for any loss incurred by you on account of non-compliance of provisions of Section 206AB of Income Tax Act, 1961 due to the incorrect or wrong information given in this declaration / statement.

Thank You