

Higher Rate of TDS and TCS for Non filer of ITR

Applicable from 1 July 2021

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Overview

Widening the tax base and encouraging tax filing has always been the prime focus of government. Finance Act, 2021 has enacted certain provisions which will be very effective in achieving this target of government. Finance Act, 2021 has enacted the provisions for higher rate of TDS and TCS for non filers of Income Tax return.

As per the provisions enacted, if anyone has not filed his Income Tax return for last two previous year, his TDS and TCS shall be deducted / collected at higher rate. Rate as prescribed is twice the applicable rate. Similar provision was enacted vide Finance Act, 2020 in section 194N where bank was required to deduct higher rate of TDS of non filers of return.

In this write up we have discussed about the provisions and procedural aspect of the above provisions of TDS and TCS which will give you insight about these provisions for higher deduction of TDS / TCS.

Table of Contents

01

Applicability on
Deductor

02

Applicability on
Deductee

03

Rate of
TDS

04

Similar Provision
for TCS

05

System Implementation

Applicability on Deductor

Every person (Deductor) who is required to deduct TDS of certain specified person^{\$} under any provision of TDS (Chapter XVIIIB of Income Tax) shall deduct the same at higher rate as prescribed under section 206AB. In other word, if any person is responsible for deducting TDS (under any section of TDS) of specified person, TDS shall be deducted at prescribed higher rate.

However this is not applicable if deductor is required to deduct TDS under below sections:

- ☐ 192 (Salary)
- ☐ 192A (Payment of Accumulated balance of PF)
- ☐ 194B (Winning from Lotteries or crossword puzzle)
- ☐ 194BB (Winning from Horse Race)
- ☐ 194LBC (Income from Investment in Securitization trust)
- ☐ 194N (Payment of certain amount in cash by Bank, Post office etc.)

^{\$} refer next page for the meaning of specified person

Applicability on Deductor

This Section is not applicable to every deductee but only to specified person. Thus TDS of only specified person shall be deducted at higher rate as per section 206AB. As per the section specified person means a person:

- ☐ Who is a resident or Non resident having permanent Establishment (PE) in India AND
- ☐ Who has not filed ITR for BOTH of the two preceding previous year, immediately prior to the PY in which TDS is to be deducted, for which due date of filing of ITR has expired. AND
- ☐ In above two preceding years total amount of TDS deducted and TCS collected from such person is 50,000 or more in each year.

Point to Note

1. Limit of Rs. 50,000 is to be consider for those two years for which ITR status is to be considered
2. If out of the last two preceding year ITR for any one year has been filed, this section shall not be applicable.

Rate of TDS

Rate at which TDS shall be deducted under this section shall be higher of the following:

- ☐ Twice the applicable rate
- ☐ 5%
- ☐ Rate as per provision of section 206AA, if PAN of Party not available.

For Eg: In case of section 194H, rate shall be 10% (double of 5%). In case of 194C TDS rate shall be 5% (Being higher 5% OR twice the applicable rate).

If PAN of Person is not available, TDS rate in both the above cases shall be determined as per section 206AA i.e. 20%.

Similar Provision for TCS collection

The provisions discussed above are pertaining to higher TDS deduction. Similar provision has been enacted for TCS collection vide section 206CCA. As per the provisions of Section 206CCA, if any person is required to collect TCS from certain specified person, TCS shall be collected at higher rate as prescribed in section 206CCA.

Specified person as per section 206CCA is same as in section 206AB. i.e. any resident or Non Resident (having PE in India) who has not filed ITR for BOTH of the two previous year, immediately prior to the PY in which TCS is to be collected, for which due date of filing of ITR has expired and TDS deducted and TCS collected from such person is 50,000 or more in each of these two year.

Rate at which TCS shall be collected under this section shall be higher of the following

- ☐ Twice the applicable rate
- ☐ 5%
- ☐ Rate as per provision of section 206CC, if PAN of Party not available.

System Implementation

1. Firstly preceeding two year need to be identified for which ITR filing Status has to be checked. Currently for FY 2021-22, last two previous year shall be 2018-19 and 2019-20 as due date of ITR for FY 2020-21 has not yet expired.
2. Secondly deductor need to identify the parties whose TDS deducted in the above two preceeding years is Rs. 50,000 or more in each year and ITR filing status of those parties need to be ascertained.
3. For ascertaining the ITR filing status of last two years, declaration may be obtained from the above parties. In the declaration along with the status of precedings years ITR, acknowledgement number of ITR filed should also be obtained.
4. After getting the declaration and acknowledgement number, status of ITR should be confirmed by deductor on Income Tax Portal through acknowledgement number provided by parties.
5. Facility to verify status of income tax return through acknowledgement number is available on Income Tax Portal.

System Implementation

5. Also, facility for verify the status of Income Tax return through PAN number should be provided by Income Tax Department on Income Tax Portal similar to the facility provided to banks to verify the status of Income Tax Returns for the purpose of deducting TDS under section 194N.
6. If ITR for both the year was not filed by the party, the party should be marked for higher deduction.
7. This exercise has to be done at least twice a year, once before due date of filing of ITR of immediately preceding previous year and once after that. In FY 2021-22 after the due date of ITR for FY 2020-21 gets expired, the last two year for consideration shall be 2019-20 and 2020-21.

THANKS!

In case of any questions



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