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Higher deduction of tax at source in certain cases (section 206AA and Section 206AB)

Introduction

Where any person is entitled to receive any income on which tax is deductible at source, he is required to furnish his PAN to the deductor. In case the PAN is not furnished, the tax shall be deducted at a higher rate under section 206AA. Similarly, where any person fails to furnish his return of income for a specified period and tax deducted/collected during that period exceeds the specified limit, the deductor shall deduct the tax at a higher rate under section 206AB.

Note: The provisions of Section 206AB are omitted w.e.f. 01-04-2025.

Section 206AA – Non-furnishing of PAN

It is mandatory for the deductee to furnish his PAN to the deductor to enable him to deduct tax at source. As per Section 206AA, if the recipient fails to furnish his PAN to the deductor then tax shall be deducted at the higher of the following rates:

- (a) At the rate specified in the relevant provision
- (b) At the rate or rates in force
- (c) At the rate of 20%

However, where tax is required to be deducted by an e-commerce operator under section 194-O or by a buyer under section 194Q and the e-commerce participant or the seller has not furnished his PAN, the rate shall be taken 5% instead of 20% for point (c).

Exemption to certain non-resident

Where the deductee is a non-resident, the provision of section 206AA shall not be applicable in certain transactions:

- On interest on bonds – This provision shall not be applicable in respect of interest paid or payable on long-term bonds including infrastructure bonds where tax is required to be deducted under section 194LC;
- On specified income - By virtue of Rule 37BC, a deductee, being a non-resident person (including a foreign company), is not required to furnish his PAN to the deductor if he receives the following income:
 - (a) Interest
 - (b) Royalty
 - (c) Fees for technical services
 - (d) Dividend
 - (e) Payments for transfer of any capital asset.



However, the deductee is required to furnish certain details and documents to the deductor.

- On income from units of specified AIF - By virtue of Rule 37BC read with Rule 114AAB, a non-resident, not being a company, or a foreign company shall not be required to obtain and quote PAN if certain conditions are satisfied.
- On transfer of specified securities - As per Rule 114AAB, a non-resident, being an Eligible Foreign Investor (EFI), shall not be required to obtain and quote PAN if certain conditions are satisfied.

Section 206AB – Non-filers of income-tax return

(This provision is omitted w.e.f. 01-04-2025)

This provision shall apply, and the tax shall be deductible at the higher rates prescribed under this provision if the following conditions are satisfied:

- a) Deductee has not filed 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;
- b) The due date to file the return of income of such assessment year, as prescribed under Section 139(1), has expired; and
- c) The aggregate amount of tax deducted and collected at source is Rs. 50,000 or more in the said previous year.

Such deductee liable for a higher TDS rate is referred to as a 'specified person'.

Sum or income liable for a higher rate of TDS

Tax is required to be deducted at higher rates in respect of every sum or income or amount from which tax is deductible under any provision of Chapter XVII-B except the sum or income or amount on which tax is deductible under any of the following provisions:

- Section 192: TDS on Salary;
- Section 192A: TDS on withdrawal from EPF;
- Section 194B: TDS on winning from lotteries, crossword puzzles, gambling, betting, etc.
- Section 194BA¹: TDS on winning from online games
- Section 194BB: TDS on winning from horse race;
- Section 194-IA: TDS from payment of consideration to buy an Immovable Property other than rural agricultural land;
- Section 194-IB: TDS from payment of rent by certain Individuals or HUF;
- Section 194LBC: TDS on income in respect of investment in Securitization Trust;
- Section 194M: TDS from payment to the contractor, commission agent, broker, or professional by certain Individuals or HUF;

¹ Inserted with effect from 01-04-2023 by the Finance Act, 2023.

- Section 194N: TDS on cash withdrawal; and
- Section 194S: Payment on transfer of Virtual Digital Asset (if the payer is a specified person)

Further, the tax shall not be deducted at higher rates under this provision if such sum (or income or amount) is paid (or payable or credited) to a non-resident who does not have a permanent establishment (PE) in India or to a person who is not required to furnish the return of income for the specified period and is notified by the Central Government. Here, PE includes a fixed place of business through which the business of the enterprise is carried on, whether wholly or partly.

All other payments shall be subject to the test of Section 206AB even if they are not considered as income in the hands of the assessee.

Rate of TDS

Where tax is required to be deducted under this provision, the tax shall be deducted at the higher of the following rates:

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

The provisions of Section 206AB override all other provisions of the Income-tax Act. It will apply even if the assessee has a lower or nil TDS certificate or he has filed a declaration under Section 197A for non-deduction of tax. However, this provision will be attracted only if the tax is otherwise deductible under Chapter XVII-B.

How to check the return filing status of the deductee?

The Department has issued a new functionality "Compliance Check for Sections 206AB & 206CCA" on <https://report.insight.gov.in> to check the IT Return filing status of the deductee. The tax deductor can feed the single PAN or multiple PANs of the deductee and get a response from the functionality if such a deductee is a specified person.

Section 206AA v. Section 206AB

Where both the provisions of Section 206AA and Section 206AB are applicable, that is, the deductee has neither furnished his PAN to the deductor nor furnished his return of income for the specified periods, the tax shall be deducted at the rates provided in Section 206AA or Section 206AB, whichever is higher.

A comparison between Section 206AA and 206AB has been enumerated in the below table:

| <i>Basis of distinction</i> | <i>Section 206AA</i> | <i>Section 206AB</i> |
|-----------------------------|---|---|
| <i>Applicability</i> | <ol style="list-style-type: none"> When a deductee fails to furnish his PAN; or When the declaration given by application u/s 197A(1)/(1A)/(1C) becomes invalid; or When PAN provided is invalid; or When PAN doesn't belong to the | When a deductee fails to furnish a return for the specified period and the aggregate amount of tax deducted or collected during such specified period exceeds the specified limit |



| | | |
|---------------------------|---|--|
| | deductee | |
| <i>Rate for deduction</i> | <p>Higher of:</p> <ul style="list-style-type: none"> • Rate specified in the relevant provision; • Rate or rates in force; or • 20%. | <p>Higher of:</p> <ul style="list-style-type: none"> • Twice the rate specified in the relevant provision; • Twice the rate or rates in force; • 5%. |
| <i>Exception</i> | <p>In respect of the following income received by a non-resident (or a foreign company):</p> <ul style="list-style-type: none"> (a) Interest on bonds referred under Section 194LC; (b) Specified payments as referred under Rule 37BC; (c) Income in respect of investment in Category I or Category II AIFs as referred under Rule 114AAB; and (d) Income from transfer of specified securities by a non-resident being an EFI as referred under Rule 114AAB. | <p>In respect of sum/income on which tax is required to be deducted under any of the following provisions:</p> <ul style="list-style-type: none"> (a) Section 192 (b) Section 192A (c) Section 194B (d) Section 194BA (e) Section 194BB (f) Section 194-IA (g) Section 194-IB (h) Section 194LBC (i) Section 194M (j) Section 194N (k) Section 194S <p>Further, this provision does not apply if the non-resident is not having any PE in India or a person is not required to file return of income of the specified period and is notified by the Central Government.</p> |
| <i>Special tax rates</i> | 5% tax rate to apply if the tax is deductible under Section 194-O and Section 194Q. | |

MCQs on Section 206AA and Section 206AB

Q1. If a person fails to furnish PAN to the deductor while receiving any income on which tax is liable to be deducted, the tax shall be deducted under _____.

- (a) Section 206AA
- (b) Section 206AB
- (c) Section 206CC
- (d) Section 206CCA

Correct answer: (a)

Justification of the correct answer: Where any person is entitled to receive any income on which tax is deductible at source, he is required to furnish his PAN to the deductor. In case the PAN is not furnished, the tax shall be deducted as per the rate prescribed under section 206AA.

Q2. As per Section 206AA, if the recipient fails to furnish his PAN to the deductor then tax shall be deducted at the _____ of the rates prescribed in the section.

- (a) Rate specified in the relevant provision
- (b) Rate or rates in force
- (c) 20%
- (d) Higher of (a), (b), and (c)

Correct answer: (d)

Justification of the correct answer: As per Section 206AA, if the recipient fails to furnish his PAN to the deductor then tax shall be deducted at the higher of the following rates:

- (a) At the rate specified in the relevant provision
- (b) At the rate or rates in force
- (c) At the rate of 20%

Q3. If any person fails to furnish his return of income for a specified period and tax deducted/collected during that period exceeds the specified limit, the deductor shall deduct the tax _____.

- (a) Twice the rate specified in the relevant provision
- (b) Twice the rate or rates in force
- (c) 5%
- (d) Higher of (a), (b), and (c)

Correct answer: (d)

Justification of the correct answer: Where tax is required to be deducted under section 206AB, the tax shall be deducted at the higher of the following rates:

- a) Twice the rate specified in the relevant provision;
- b) Twice the rate or rates in force; or
- c) 5%.

Q4. Section 206AB shall apply and the tax shall be deductible at the higher rates prescribed under this provision if _____

- a) Deductee has not filed 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;
- b) The due date to file the return of income of such assessment year, as prescribed under Section 139(1), has expired; and
- c) The aggregate amount of tax deducted and collected at source is Rs. 50,000 or more in the said previous year.
- d) All of the above

Correct answer: (d)

Justification of the correct answer: This provision shall apply, and the tax shall be deductible at the higher rates prescribed under this provision if the following conditions are satisfied:

- a) Deductee has not filed 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;
- b) The due date to file the return of income of such assessment year, as prescribed under Section 139(1), has expired; and
- c) The aggregate amount of tax deducted and collected at source is Rs. 50,000 or more in the said previous year.

Q5. Section 206AB is applicable where payment is made for the income liable to tax deduction under _____.

- (a) Section 194J
- (b) Section 192
- (c) Section 194B
- (d) Section 194-IA

Correct answer: (a)

Justification of the correct answer: Tax is required to be deducted at higher rates in respect of every sum or income or amount from which tax is deductible under any provision of Chapter XVII-B except the sum or income or amount on which tax is deductible under certain provisions including section 192, 194B and 194-IA.