

Section 206AB of Income Tax Act

The Finance Bill 2021 introduced section 206AB for a higher deduction of TDS. Before the Finance Bill, 2021 a higher deduction of TDS was covered in section 206AA for not furnishing PAN to the deductor of TDS. With the introduction of section 206AB, the Income Tax Act, 1961 covers a situation wherein a higher deduction of TDS is mandatory for a specified taxpayer.

What is Section 206AB?

Section 206AB provides for a tax deduction at a higher rate than the TDS rates prescribed under each relevant section. Hence, while making any payment or making credit for any sum that requires deduction of TDS, the TDS must be deducted at a higher rate. The provision of Section 206AB is applicable to specified taxpayers only. Section 206AB overrides other provisions/ section/ rules opposing this section in the Income Tax Act, 1961.

Applicability of Section 206AB of Income Tax Act

Section 206AB is applicable on fulfilling the following conditions:

1. The deductee taxpayer has not filed the income tax return for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted. For example- The TDS is to be deducted for the financial year 2021-22. If the taxpayer has not filed the income tax return for FY 2020-21 and FY 2019-20 then section 206AB is applicable.
2. The due date for filing the income tax return for the previous financial years has expired.
3. The total TDS deducted in the previous two financial years is Rs 50,000 or more.

Non-Applicability of Section 206AB

1. Section 206AB is not applicable to a non-resident who does not have a permanent establishment in India. A permanent establishment in India means a fixed place of business through which the non-resident taxpayer could carry on their business partially or entirely.
2. Section 206AB is not applicable to any payment of a sum on which the following sections of TDS are applicable:
 - Salary payment under section 192
 - Payment of accumulated balance due to an employee by an employer under section 192A
 - Winnings from lottery or crossword puzzle under section 194B
 - Winning from a horse race under section 194BB
 - Income in respect of investment in securitization trust under section Section 194LBC

- Payments of sum in cash exceeding the limit prescribed under section 194N

TDS Rate Under Section 206AB

If the taxpayer fulfills the conditions for the applicability of Section 206AB then the following TDS rates are applicable:

1. at twice the rate specified in the relevant section of TDS; or
2. at twice the rate in force; or
3. 5% TDS rate.

If the taxpayer does not file income tax return for the last 2 FYs and does not furnish their PAN to the deductor then the TDS rates are different. In such a case the applicable TDS rate will be higher of the following:

1. TDS rate as per section 206AA
2. TDS rate as per section 206AB

Section 206AA is applicable when the deductee fails to furnish the PAN to the deductor. Furthermore, the transaction involves a mandatory deduction of TDS. The TDS rate for section 206AA is higher of the following:

1. at the rate specified in the relevant section of TDS; or
2. at the rate of 20%

How To Calculate TDS Under Section 206AB?

Illustration-1: If section 206AB is applicable

Miss Puja makes a payment of Rs 5,00,000 as a professional consultancy fee to Miss Rani on 21/12/2021. Such a payment is covered under section 194J of the Income Tax Act, 1961. Miss Rani did not file her income tax return for the past 2 financial years i.e. FY 2020-2021 and FY 2019-2020. Since she did not file her income tax returns section 206AB is applicable. The TDS rate for professional fees under section 194J is 10%.

The applicable TDS rate will be the higher of the following:

1. Twice the rate specified in the section 194J- 20% (10% * 2)
2. 5% TDS rate

Hence, the applicable TDS rate of 20%. TDS amount will be Rs 1,00,000 (Rs 5,00,000 * 20%)

Illustration-2: If section 206AA and section 206AB are applicable simultaneously.

Miss Kajal makes a payment of Rs 5,00,000 as a fee under the contractual agreement. to Miss Shalini on 21/12/2021. Such a payment is covered under section 194C of the Income Tax Act, 1961. Miss Shalini did not file her income tax return for the past 2 financial years i.e. FY 2020-2021

and FY 2019-2020. Moreover, she did not furnish her PAN to Miss Kajal. Hence, section 206AA and section 206AB are applicable simultaneously. The TDS rate for a fee under a contractual agreement under section 194C is 1% in the case of an individual taxpayer

As per section 206AA, the applicable tax rate is higher if the following.

3. at 1% as specified in section 194C; or
4. at the rate of 20%

As per section 206AB, the applicable tax rate is higher if the following:

5. Twice the rate specified in the section 194C- 2% (1% as per section 194C* 2)
6. 5% TDS rate

In this case, the applicable TDS rate will be higher of rate under section 206AA and section 206AB:

1. Section 206AA- 20%
2. Section 206AB- 5%

Hence, the applicable TDS rate for Miss Shalini will be 20%. TDS amount will be Rs 1,00,000 (Rs 5,00,000 * 20%)

Identification of Specified Person

The Income Tax Department has provided tools to its taxpayers to identify a specified taxpayer. This will ensure that the deductor is able to identify the defaulting deductee and deduct the TDS rates as per section 206AB. This compliance check functionality helps a taxpayer to identify specified defaulting taxpayers through an individual search using the PAN. To use this functionality the taxpayer must provide the details about the specified taxpayer such as PAN, financial year, name, PAN allotment number, the status of the PAN-Aadhaar link. Alternatively, it also allows a bulk search for multiple PANs of different taxpayers. Here, there is a requirement to prepare and upload a CSV file in the given format.

Frequently Asked Questions

Is 206AB applicable to NRI?

Yes, section 206AB is applicable to an NRI non-resident Indian. However, it is not applicable to a non-resident taxpayer who does not have a permanent establishment in India. A permanent establishment in India means a fixed place of business through which the non-resident taxpayer could carry on their business partially or entirely.

Is 206AB applicable for salaried employees?

Section 206AB is not applicable to salary payment under section 192. However, it is applicable to a salaried employee for any payment except the exempted payments under sections 192A, 194B, 194BB, 194N, 194LBC. Hence, if the salaried person receives any payment covered under other sections of TDS and he/ she fails to file their income tax returns then section 206AA is applicable.

Who are specified persons under section 206AB?

The specified persons are the taxpayers who have not filed the income tax return for both of the two assessment years relevant to the two previous years immediately prior to the previous year in which tax is required to be deducted

How do you know if someone is specified?

To know if the payee or deductee is a specified person or not you can use the compliance check functionality. You can make an individual search by providing PAN and other details. Alternatively, you can make a bulk search by uploading a CSV file.