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Latest TDS/TCS Related Amendments

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Taxation is the price which civilized communities pay for the opportunity of remaining civilized!

Topics to be covered

TDS on Sale of Goods- Section 194Q

Interlinking of section 206C(1H) and 194Q

TDS/ TCS in case of Non-Filers of Income Tax Return- 206AB/206CCA

Provisions of Section 139AA read with Rule 114AAA along with usage of New Compliance Facility introduced by ITD

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The concept of TDS was introduced with an aim to collect tax from the very source of income. It is based on the principle **"Pay as you Earn".**

As per this concept, when you receive payment, the tax element is deducted and directly routed to the government and what you receive is the net amount.

Person (deductor) who is liable to make payment of specified nature to any other person (deductee) shall deduct tax at source and remit the same into the account of the Central Government.

The deductee from whose income tax has been deducted at source would be entitled to get credit of the amount so deducted. This is one way of collecting income tax.

Section 194Q

Section 194Q

Inserted vide THE FINANCE ACT, 2021 dated 28-03-2021 w.e.f. 01-07-2021

Deduction of tax at source on payment of certain sum for purchase of goods.

194Q. (1) Any person, being a **buyer** who is responsible **for paying any sum to any resident (**hereafter in this section referred to as the seller) for **purchase of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year,** shall, at the time of credit of such sum to the account of the seller or at the time of payment thereof by any mode, whichever is earlier, deduct an amount **equal to 0.1 per cent.** of such **sum exceeding fifty lakh rupees as income-tax.**

Explanation.––For the purposes of this sub-section, **"buyer"** means a person whose total sales, gross receipts or turnover from the business carried on by him **exceed ten crore** rupees during the financial year immediately preceding the financial year in which the purchase of goods is carried out, not being a person, as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to such conditions as may be specified therein.

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Section 194Q

Inserted vide THE FINANCE ACT, 2021 dated 28-03-2021 w.e.f. 01-07-2021

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called **“suspense account”** or by any other name, in the books of account of the person liable to pay such income, such credit of income shall be deemed to be the credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) If any difficulty arises in giving effect to the provisions of this section, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty.

(4) Every guideline issued by the Board under sub-section (3) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and the person liable to deduct tax.

(5) The provisions of this section shall not apply to a transaction on which––

(a) tax is deductible under any of the provisions of this Act; and

(b) tax is collectible under the provisions of section 206C other than a transaction to which **sub-section (1H) of section 206C** applies.

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Provisions Uncloaked

When will this Provision be applicable:

- In case of sale of goods
- Exceeding INR 5 Crore

Who is required to deduct the Tax:

- Buyer
- Buyer means any person whose turnover in the preceding financial year exceeds INR 10 Crore

When is TDS Required to be covered:

- At the time of payment or credit, whichever is earlier.
- On the amounts exceeding Rs.50 lakh.

Provisions Uncloaked

Now one more thing to keep in mind that this limit of **Rs 50 lakh** is for one financial year for each seller, so now this provision is applicable from **1st July 2021,** hence TDS is required to be deducted only on purchases after **1st July 2021** but while ascertaining the limit of purchase **Rs. 50.00 Lakhs**, the purchases from **April 1, 2021**, the purchase will also have to be taken into account.

Provisions Uncloaked

Rate of TDS

- 0.1%
- In case seller does not provides his PAN , TDS will be deducted at 5%

When are the provisions applicable from:

- 01.07.2021

Provisions of Section 194Q are not applicable if:

- TDS deducted under any other provision of the Act or
- TCS Collected as per the provisions of the Act except for TCS under section 206C(1H) or
- In case of import of goods or
- In case of goods purchased from Non-Residents

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Provisions Uncloaked

Provisions of Section 194Q are not applicable if:

- If seller is person specified in **Section 196** of the Act being Central Government, State Government, Reserve bank of India, corporations established by Central Act which are exempt from income tax on its income and Mutual Funds as covered by **Section 10(23D)** of the Act.
- Any other person as the Central Government may notify **(no such notification has been issued as on date).**
- If a seller of goods is Central Government or State Government or an Embassy, High Commission, Legation, Commission, Consulate and Trade representation of foreign state or local authority as referred to in section 10(20) of the Act

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Due Dates

Filling of Return

Quarter Ended	To be filed by
June	31st July
September	31st October
December	31st January
March	31st May

Issuance Of TDS Certificate

Certificate of TDS is required to be issued by buyer to a seller in Form No.16A within 15 days from the due date of filing TDS return as mentioned above.

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What will be the result of not deducting/depositing

- As per **Section 40(ia)** of the Income Tax Laws an amount has been paid to a resident on which TDS is to be deducted but not deducted and if deducted and the same is not deposited before the expiry of the time provided for furnish of ITR under section 139(1) then the 30% of the amount on which TDS is to be deducted and deposited will be added to the income of that person.
- This provision will also be applicable to TDS falling under section 194Q of TDS so wherever the provisions of TDS are applicable, TDS must be deposited as the amount of purchase of goods is always very high and 30% of that is added back to the income of the Assessee then the tax on such amount will be very high.
- So be careful and deduct and deposit the TDS keeping in mind the provision of addition of this 30% to the income.

Interlinking of Section 206C(1H) and section 194Q

Section 206C(1H)

1H) Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value **exceeding fifty lakh rupees** in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G) shall, at the time of receipt of such amount, collect from the buyer, a sum equal to 0.1 per cent. of the sale consideration exceeding fifty lakh rupees as income-tax:

Provided that if the **buyer** has not provided the **Permanent Account Number** or the Aadhaar number to the seller, then the provisions of clause (ii) of sub-section (1) of **section 206CC** shall be read as if for the words **"five per cent.",** the words "one per cent." had been substituted:

Provided further that the provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provision of this Act on the goods purchased by him from the seller and has deducted such amount.

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Overview of Section 206C(1H)- TCS on Sale of Goods

TCS under section 206C(1H) is applicable @ 0.1% on sale of Goods

Provided

- **the Value of Goods to a single buyer is exceeding INR 50 Lacs and**
- **the turnover of the seller is exceeding INR 1 Crore**

<u>TCS u/s 206C(1H) is applicable only on goods for which TDS is not applicable under any other provision dealing with TDS/TCS</u>

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Section 206C(1H)

Both TDS u/s 194Q and TCS u/s 206C(1H) are applicable on Goods

For TCS Applicability	For TDS Applicability
✓ **Turnover of Seller** should be more than INR **10 Crores** in preceding FY and ✓ Value of Goods sold to a single buyer should be more than **INR 50 Lacs.** ✓ TCS is required to be collected by Seller over and above the Sale price of the Goods.	✓ Turnover of Buyer should be more than **INR 10 Crores** preceding FY and ✓ Value of Goods purchased from a single seller should be more than **INR 50 Lacs.** ✓ TDS is required to be deducted by purchaser from the amount payable to the Seller.

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Section 206C(1H)

In case the conditions applicable on seller are satisfied then TCS will be applicable

In case the conditions applicable on Buyer are satisfied then TDS will be applicable

In case the conditions applicable on both buyer and seller are satisfied then preference shall be given to TDS under section 194Q.

Example

Turnover of Buyer in PFY	Turnover of Seller in PFY	Value of Goods	Nature of Sale	TDS / TCS except 194Q/ 206C(1H)	206C(1H)	194Q
5 Crore	11 Crore	60 Lakhs	Sale of Laptops	No	Yes	No
11 Crore	5 Crore	60 Lakhs	Sale of Laptops	No	No	Yes
11 Crore	11 Crore	60 Lakhs	Sale of Laptops	No	No	Yes
11 Crore	11 Crore	20 Lakhs	Sale of Car	Yes	No	No

Frequently Asked Questions

Q1.How to compute turnover for the purpose of section 194Q?

Ans. Guidance Note of ICAI on Tax Audit can be referred for calculation of Turnover as the section has not specifically defined the manner to compute the turnover.

Q2. Whether provisions of section 206AB will be applicable on TDS on purchase of Goods?

Ans. Yes , section 206AB is a general section and will be applicable.

Frequently Asked Questions

Q3.Is there any reporting requirement if a transaction of purchase of goods is not liable to TDS by virtue of section 194Q(5)?

Ans. In respect of transaction of purchase of goods u/s 194Q(5),where tax is not deducted since the same is subject to TDS under any other section, the deductor shall separately furnish details of such transaction in Form 26Q though the same would amount to reporting of same transaction twice.

Q4. Whether a seller of goods can apply for lower / non-deduction certificate from tax authorities?

Ans. Section 197/ 197A provide for lower or non0deduction of TDS, however the same have not been extended to the provisions of section 194Q, accordingly, one may not be able to apply for Lower Tax Deduction Certificate.

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Frequently Asked Questions

Q5. While computing the threshold of INR 5 million for FY 2021-22, whether the transactions carried out between April 2021- June 2021 are to be included?

Ans. The provisions of section 194Q are operative from July 01, 2021, however if the analogy is drawn from the circular issued for applicability of TCS u/s 206C(1H), it can be said that the purchases during April 2021 to June 2021 are required to be included while computing the threshold of Rs. 50 Lakh.

Q6.Whether the threshold of Rs. 50 Lakh is to be tested for all the sellers cumulatively or is it an individual limit applicable to each seller?

Ans. The threshold of Rs. 50 Lakh is applicable for each individual seller.

Q7. Whether tax is to be deducted in respect of consideration paid on or after July 1, 2021, in respect of purchase of goods made during April 2021-June 2021?

Ans. Considering that the TDS provisions are effective only from July 01, 2021, the provisions should apply only in respect of transaction of purchase effected on or after July 01, 2021, and in case the credit was prior to July 01, then the point of taxation in this case was also prior to the cut off date accordingly, such transaction should not be subject to TDS.

However, such consideration is required to be included while computing the threshold of Rs. 50 Lakh for a seller.

Further, one may deduct TDS on such transaction keeping a conservative view as it involves ambiguity.

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Frequently Asked Questions

Q8. The buyer has paid an advance prior to July 01, 2021 and purchase against the said advance will be recognized on or after July 01, 2021. Whether TDS is applicable on such sale?

Ans. Since the event triggering liability to deduct tax (i.e., time of payment of advance) has taken place before July 01, 2021, as per our inference , the transaction shall not subject to TDS. Clarification is sought to this effect however keeping a conservative view, one may decide to deduct TDS.

Q9. Whether advance paid by the buyer should be considered in computing threshold of Rs. 50 lakhs?

Ans. The provisions of section 194Q requires deduction of tax at source when value of purchase of goods exceeds Rs. 50 lakhs in Financial Year.

Frequently Asked Questions

The payment of advance by buyer against purchase of goods cannot be considered as transaction of purchase of goods. Hence, any advance paid during the year should not be considered while computing threshold of Rs. 50 lakhs. However, buyer shall be required to deduct TDS on such advance if same exceeds Rs. 50 lakhs.

Q10.Whether TDS provisions apply on advance paid on or after July 01, 2021 where no purchase has been recognized during the financial year 2021-22 against such advance?

If the value of goods exceeded INR 50 Lacs and then the advance is received without getting the purchase actualized then Tax would be required to be deducted by irrespective of actual purchase since liability to deduct TDS arise at the time of payment or credit whichever is earlier.

Q11. Whether TDS will be reversed in case of Purchase returns or credit Note issued ?

TDS is applicable at the time of payment or credit for purchase of goods, whichever is earlier and therefore buyer is required to deduct TDS on value of goods purchased. However, if any purchase return or debit note is booked against any earlier purchase of goods, buyer cannot reverse its TDS liability to the extent of tax already deducted by the buyer against such purchase of goods.

Q12. Whether a transaction of purchase of goods involving consideration other than cash or where consideration is paid by way of passing journal voucher attracts TDS?

The mode of payment will not impact the liability to deduct TDS and accordingly payment through journal entry or in kind will still attract TDS.

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Frequently Asked Questions

Q13. In a case where buyer of goods is liable to deduct tax at source u/s 194Q but fails to do the same, whether seller of goods is liable to collect tax at source on same u/s 206C(1H)?

The seller of goods shall not be required to collect tax at source u/s 206C(1H) only when buyer is liable to deduct TDS and the buyer has in fact deducted the same. In case buyer fails to deduct tax u/s 194Q though liable to deduct, the seller in such case is required to collect tax at source u/s 206C(1H) of the Act.

Recent Circular for Applicability of Section 194Q
Circular 13/2021

TDS Not Applicable on Transactions taking place through Exchanges

- TDS will not be applicable on securities or commodities traded through recognised stock exchanges or are cleared and settled through recognised clearing corporations including stock exchanges and clearing corporations in International Financial Service Centre.
- TDS will not be applicable on electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered as per Regulations of CERC.

Thresh Hold Limit for FY 2021-22

- Thresh hold limit for FY 2021-22 of Rs. 50 lakhs for FY 2021-22 shall be computed from 01 April onwards even though the section is applicable from 01 July , 2021. In case the total purchase from a single seller is more than or equal to INR 50 lakhs during the period 01 April to 30 th June then TDS shall be deducted on all the amounts paid or credited after 01st July 2021.
- **TDS will not be applicable** in cases where the payment or credit , any one of the two events have occurred before 01 July 2021.

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Recent Circular for Applicability of Section 194Q
Circular 13/2021

Treatment of GST while Deducting TDS

There are two point of taxations for TDS ie. payment or Credit , whichever is earlier.

- **If TDS applicable at the time of Credit , since Credit was earlier-** TDS will be applicable on the amount excluding GST, if the GST amount is indicated separately, as per the agreement between Buyer and Seller.
- **If TDS applicable at the time of Payment , since Payment was earlier-** TDS will be applicable on the whole amount inclusive of GST as it is not possible to identity that payment with GST component of the amount to be invoiced in future .

TDS Applicability in case of Purchase Returns

- **Money Returned for the Purchases Returned:** TDS will be adjusted for future purchases from the same seller.
- **Goods Replaced for the Purchases Returned :** No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced.

Recent Circular for Applicability of Section 194Q
Circular 13/2021

Whether TDS will be applicable in case the Buyer is a Non-Resident

- Provisions of section 194Q of the Act shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. Accordingly a Non- Resident Buyer not having PE in India will not be required to comply with 194Q .
- Further in case of Buyers being Non-Residents having Permanent Establishment in India, only those Non-Residents will be required to comply 194Q who have made the purchases in relation to their Permanent Establishments.

TDS/ TCS in case of Persons who have their Incomes Exempt under IT Act

- TDS will not apply in case of person who is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament **(Like RBI Act, ADB Act etc.).**
- TCS will also not apply in case of Buyers who have their income exempt from Income Tax Act or under any other Act passed by Parliament.
- The above exemption will not apply if only part of the income of the person **(being a seller or being a buyer, as the case may be)** is exempt.

Recent Circular for Applicability of Section 194Q
Circular 13/2021

TDS Applicability on Advance Payments

- Since TDS is applicable at the time of payment or credit whichever is earlier, accordingly TDS will be applicable in case of Advance Payment

TDS Applicability in the year of Incorporation

- TDS will be applicable only in case the Buyer has a turnover exceeding 10 crore in Preceding Financial Year to the year in which goods were purchased, and in case of Newly incorporated year since this condition will not be satisfied therefore in the first year of incorporation of Buyer, TDS will not be required to be deducted

Whether TDS required to be deducted in case the Buyer has a turnover of Rs. 10crores or less

- A buyer is required to have total sales or gross receipts or turnover from the **business carried** on by him exceeding ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out.

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Recent Circular for Applicability of Section 194Q
Circular 13/2021

- Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs 10 crore. His turnover or receipts from non-business activity is not to be counted for this purpose.

TDS Applicability of Section 194O read with 194Q read with 206C(1H)

- As per **section 194O**, TDS is required to be deducted by the electronic operators.
- As per **section 194Q(5), 194Q** will not apply in case TDS is required to be deducted under any other provision of the Act.
- As per second proviso to **section 206C(1H),** TCS will be required to be collected only if TDS/TCS is not applicable under any other information is required.
- Primary responsibility of deduction of Tax under **section 194Q** and e-commerce operator cannot be relieved from his responsibility to deducted Tax even if the seller has collected the tax under **sub-section (1H) of section 206C of the Act.**

Transaction on which both TDS and TCS are applicable

- Generally if both TDS and TCS are applicable on the transaction, then preference shall be given to **TDS u/s 194Q.**
- However, if TCS was already collected on the transactions, before the buyer could deduct tax under section 194-Q of the Act on the same transaction, such transaction would not be subjected to tax deduction again by the buyer.

TDS / TCS in case of Non- Filers of Income Tax Return rates-Section 206AB & 206CCA

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Provisions

The Finance Bill 2021, inserted two new section 206AB & 206CCA. The said section provide for higher rate of TDS/TCS to be applied for the non-filers of income tax return.

1. TDS/TCS was already deducted or collected at higher rates u/s 206AA & 206CC respectively for "NON-FURNISHING OF PAN".
2. The difference between the 206AA & 206CC:

Tax is required to be deducted	Tax is required to be collected
(i) at the rate specified in the relevant provision of this Act;	(i) at twice the rate specified in the relevant provision of this Act;
(ii) at the rate or rates in force; or	(ii) at the rate of 5%:
(iii) at the rate of 20%:	

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For TDS

The section 206AB is applicable to specified person as defined in the provisions. The provision of sub-section (1) of 206AB provides for TDS rate to be applied if the amount is paid or credited to a specified person being higher of the below rates:-

- ✓ at twice the rate specified in the relevant provision of the Act; or
- ✓ at twice the rate or rates in force; or
- ✓ at the rate of 5%

The provision of sub-section (1) of section 206AB does not apply in case where tax is required to be deducted under 1942, 192A, 194B, 194BB,194LBC or 194N.

Specified Persons

Further, **sub-section 2 of 206AB** provides that where both the **section 206AA & 206AB** are applicable i.e. the specified person has not submitted PAN as well as not filed the Income tax return, the tax shall be deducted at higher rate amongst the both section respectively.

"Specified Persons" means who satisfies the following conditions:

- ✓ A person who has not filed the Income Tax Return for two previous years immediately prior to the previous year in which tax is required to be deducted;
- ✓ The time limit of filing return of income under sub-section (1) of section 139 is expired; and
- ✓ The aggregate tax deducted at source or tax collected at source, as the case maybe, is Rs. 50,000 or more in each of the two previous years.
- ✓ However, the specified persons shall not include a **Non-resident** who does not have **Permanent Establishment (PE) in India.**

For TCS

Section 206CCA is proposed to be inserted which provides for TCS rate were tax is required to be collect from the specified person being higher of the rates:

(i) at twice the rate specified in the relevant provision of the Act; or

(ii) at the rate of 5%.

Further, the sub-sections (2) & (3) of section 206CCA are similar to the provision of sub-sections (2) & (3) of section 206AB as explained above.

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Section 139AA read with Rule 114AAA

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Provisions

1. **Finance Act, 2017** inserted **section 139AA** in the Income-tax Act, 1961 where by a person shall quote Aadhaar Number for obtaining PAN Number and for persons who already have the PAN Number shall intimate the Aadhaar Number to the relevant Authority.
2. As per **Notification 11/2020** , CBDT introduced Rules for quoting of PAN Number and Rule 114AAA was inserted and it was provided that in case the Aadhaar Number is not intimated (the Aadhaar and PAN are not linked) then the PAN shall become inoperative and shall be deemed that he has not furnished, intimated or quoted the PAN Number and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number.

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Consequences of Failure u/s 139AA(2)

- The tax shall be deducted at **a higher rate as per Section 206AA**;
- The tax shall be collected at **a higher rate as per Section 206CC;**
- Taxpayers will not be able to file the return of income. Consequently, payment of late fee under **section 234F**, interest under **section 234A**, forfeiture of current year's losses, best judgment assessment, the penalty for concealment of income, prosecution for failure to furnish return of income, are some of the related outcomes;
- A penalty under Section 272B shall be levied for non Compliance of Section 139A which requires quoting of PAN in certain financial transactions.

Burden on Tax Deductors/Collectors

1. The deductors (collectors) shall ensure that the PAN Number of the deductee (collectee) is linked with the Aadhaar Number to avoid application of **Rule 114AAA**.
2. In case the same are not linked **TDS/ TCS shall be deducted at a higher rate of 20%**
3. In case the deductor fails to ensure the compliance of deductee with section 139AA ,and deducts TDS at the normal rates, then:

- **The Expense on which TDS was required to be deducted will be disallowed.**
- **Deductor shall be considered "Assessee in Default" and interest u/s 201(1A) shall apply for short Deduction of TDS @1% per month or part of a month.**

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Section 234H

1. The Finance Bill 2021 has inserted a new **Section 234H** to levy a fee **for default in intimating the Aadhaar Number**.
2. If a person is required to intimate his Aadhaar under **Section 139AA(2)** and such person fails to do so, he shall be liable to pay a fee, as may be prescribed, not exceeding **Rs. 1,000** at the time of making such intimation.
3. The last date to link the PAN and Aadhaar had been extended to **01.07.2021.**

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Compliance Check Facility released by Income Tax Department

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Compliance Check Facility released by Income Tax Department

The recent **Circular 11/2021 released by CBDT on 22.06.2021**, has introduced the new facility to check the applicability of **section 206AB and 206CC and section 139AA read with Rule 114AAA.**

The facility is available on the portal **"https://report.insight.gov.in"**

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Certain Clarifications made in the Circular with respect to Sec. 206AB and 206CCA:-

a) Preceding two FYs for the purpose of applicability of section 206AB(206CCA) for FY 2021-22 are **FY 2018-19 and FY 2019-20**.

b) The deductor (collector) shall check the applicability of section 206AB in the **beginning of each year** and **during the year no new names will be added to the list.**

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Compliance Check Facility released by Income Tax Department

However, a name may be removed from the list if :

1. **Specified person** files and verifies the return for preceding two FYS during the year in which TDS/TCS is required to be deducted/collected ,or
2. If the aggregate TDS/ TCS comes out to be less that **INR 50,000** after revision of TDS Return.
3. Each year the list will be drawn afresh for identifying the "specified person".
4. This functionality will also help the deductors to check whether PAN and Aadhar are linked.

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Have any Queries ?

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