

**KARNATAKA STATE CHARTERED
ACCOUNTANTS ASSOCIATION**

KSCAAshort Series

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CA AMEET N. PATEL

**New TDS/TCS provisions
applicable from 1.7.2021
(S.194Q, S.206AB, S.206CCA, etc) -
Introduction, practical aspects and
way forward**

SECTION 194Q

**New TDS section
effective**

1st July 2021

TDS on Purchase of Goods [Section 194Q]

A **buyer** shall deduct tax under this provision from the **value of goods purchased** by it if the following conditions are satisfied:

- His total sales, gross receipts, or turnover from the business carried on by him **exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which he purchases the goods.**
- There is a purchase of goods **from a resident person**
- Value or aggregate value of goods purchased (from the same person) **exceeds Rs. 50 lakhs in any previous year**
- The buyer should not be on the list of persons excluded from the provision for deduction of tax by way of a notification
- No tax is deductible or collectible under any other provision except Section 206C(1H).

Buyer shall deduct tax **at the rate of 0.1% of the purchase value exceeding Rs. 50 lakhs** 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*. The tax shall be deducted even if the sum is credited to the 'Suspense Account'.

TDS will be deducted on the date of purchase transaction or payment whichever is earlier.

TDS should be deducted on net purchase amount without GST.

If seller is not having PAN, then TDS is to be deducted @ 5% as per section 206AA

TDS is not to be deducted on purchase of services.

TDS shall be deducted on purchases made from India. Import of goods is not liable to TDS.

CBDT vide Circular No.17 of 2020 has clarified that sec 206C(1H) is not applicable on securities and commodities traded on a stock exchange. Similar logic can be applied u/s 194Q till any clarification comes wrt this section.

TURNOVER LIMIT U/S. 194Q

TDS is to be made only in case of a resident seller, where the value or the aggregate value of purchases made from that seller exceeds INR 50 Lakh in a financial year. This condition needs to be evaluated separately for each seller and the amount needs to be evaluated separately every FY.

The question whether the purchase made prior to 1st July 2021 during FY 2021-22 is to be considered while computing the threshold of INR 50 lakh or not, is yet to be addressed by the Central Board of Direct Taxes (CBDT).

As a prudent measure, it is advisable that for the purpose of reckoning the threshold of INR 50 lakh, the purchase/s made prior to 1st July 2021 during FY 2021-22 should be included.

CONSEQUENCES OF NON COMPLIANCE WITH SECTION 194Q

Non deduction of TDS u/s. 194Q would attract provisions of section 40(a)(ia) and result in disallowance of 30% of the expenditure

Examples of TDS Under Section 194Q

Example 1 :

Mr. XYZ, a buyer, having a total turnover of INR 70 Crores purchases goods from Mr. LMN, a seller, worth INR 60 Lakhs.

Analysis of applicability of section 194Q in the given transaction:

Since buyer's turnover is above INR 10 Crores, provisions of **section 194Q** would be applicable.

Further, the buyer has purchased goods having a value of more than INR 50 Lakhs.

Thus, TDS under **section 194Q** will be deductible by the buyer in the following manner-

Particulars	Amount
Taxable amount (INR 60 Lakhs – INR 50 Lakhs)	INR 10 Lakhs
Rate at which TDS deductible under section 194Q	0.1%
Amount of TDS deductible	INR 1,000

Example 2:

Mr. B, a buyer, is having gross receipts of INR 30 Crores. He buys goods from Mr. S worth INR 70 Lakhs. The turnover of Mr. S was INR 15 Crores.

Applicability of provisions of section 194Q in the above transaction:

Provisions of **section 194Q** get attracted as the buyer's gross receipts exceed INR 10 Crores.

However, provisions of section 206C(1H) also get applicable as seller's turnover exceeds INR 10 Crores.

Now the question is – which section will apply?

Section 206C(1H) 2nd proviso says that:

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.

Therefore, in my view, 194Q will apply and NOT 206C

COMPARISON BETWEEN 194Q AND 206C(IH)

Sl. No	Basis of Distinction	TDS on Purchase of Goods u/s 194Q	TCS on Sale of Goods u/s 206C (1H)
1	Who is liable for deduction/Collection	Buyer is liable to deduct the tax	Seller is liable to collect the tax
2	Turnover limit of deductor or collector	The total sales/gross receipts/Turnover of the buyer from the Business should exceed Rs. 10 Crores during the FY immediately preceding the financial year in which such goods are purchased	The total sales/gross receipts/Turnover of the Collector from the Business should exceed Rs. 10 Crores during the FY immediately preceding the financial year in which such goods are sold
3	Threshold limit of Purchase/Sale	If the value of purchase exceeds Rs.50 Lakhs	If the value of sale exceeds Rs.50 Lakhs
4	Rate	0.1%	0.1%
5	Amount on which tax to be deducted/collected	On the amount of purchase in excess of Rs. 50 Lakhs	On the amount of sale consideration in excess of Rs. 50 Lakhs
6	Time of deduction/collection	At the time of credit or payment whichever is earlier	At the time of receipt
7	Preference to be given	Purchaser is first liable to deduct the tax if the transaction could be subject to both provision	Seller shall be liable to collect the tax only if the purchaser is not liable to deduct the tax or purchaser failed to deduct tax

COMPARISON BETWEEN 194Q AND 206C(IH)

EXAMPLES

SNo	Particulars	Scenario 1	Scenario 2	Scenario 3
1	Turnover of Seller (In Cr)	12	6	12
2	Turnover of Buyer (In Cr)	6	12	12
3	Sale of goods (In Cr)	2	2	2
4	Sales consideration paid during the year (In Cr)	1	1	1
5	Who is liable to deduct or collect tax?	Seller u/s 206C (1H)	Buyer u/s 194Q	Buyer u/s 194Q
6	Rate of tax	0.10%	0.10%	0.10%
7	Amount on which tax to be deducted or collected (in Cr)	0.5	1.5	1.5
8	Tax to be deducted or collected	5000	15000	15000

SECTION 206AB
&
SECTION 206CCA

New sections effective
1st July 2021

Salient features of Section 206AB

- Deduction of tax at higher rates
- Does not apply to
 - Section 192: TDS on Salary
 - Section 192A: TDS on withdrawal from EPF
 - Section 194B: TDS on winning from lotteries, crossword puzzles, etc
 - Section 194BB: TDS on winning from racehorses
 - Section 194LBC: TDS on income in respect of investment in Securitization Trust
 - Section 194N: TDS on cash withdrawal.

Salient features of Section 206AB

Applies only to a deductee who is a “**specified person**” who is defined as **a person**:

- Who has **not filed** the return of income for **both** of the two assessment years relevant to the previous years immediately before the previous year in which tax is required to be deducted **and**
- The due date to file the return of income for these two years as prescribed under Section 139(1) has expired; **and**
- The **aggregate** amount of **tax deducted and collected at source** is Rs. 50,000 or more in **each** of these two previous years.

However, this provision is not applicable in case of a non-resident who does not have a permanent establishment in India.

Salient features of Section 206AB

Deductor shall deduct tax under this provision at the **higher** of the following rates:

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

However, where provisions of this section as well as Section 206AA are applicable, the deductor shall deduct tax at rates provided in this section or in section 206AA, whichever is higher.

How to comply with section 206AB?

The CBDT has issued very clear instructions on how to use the utility that the department has made available on their portal

Circular No. 11 of 2021 dated 21st June, 2021 is very useful

The logic of the sections is captured very clearly in the circular

One need not dissect the section further or speculate further on what to do and what not to do.

One needs to log onto :

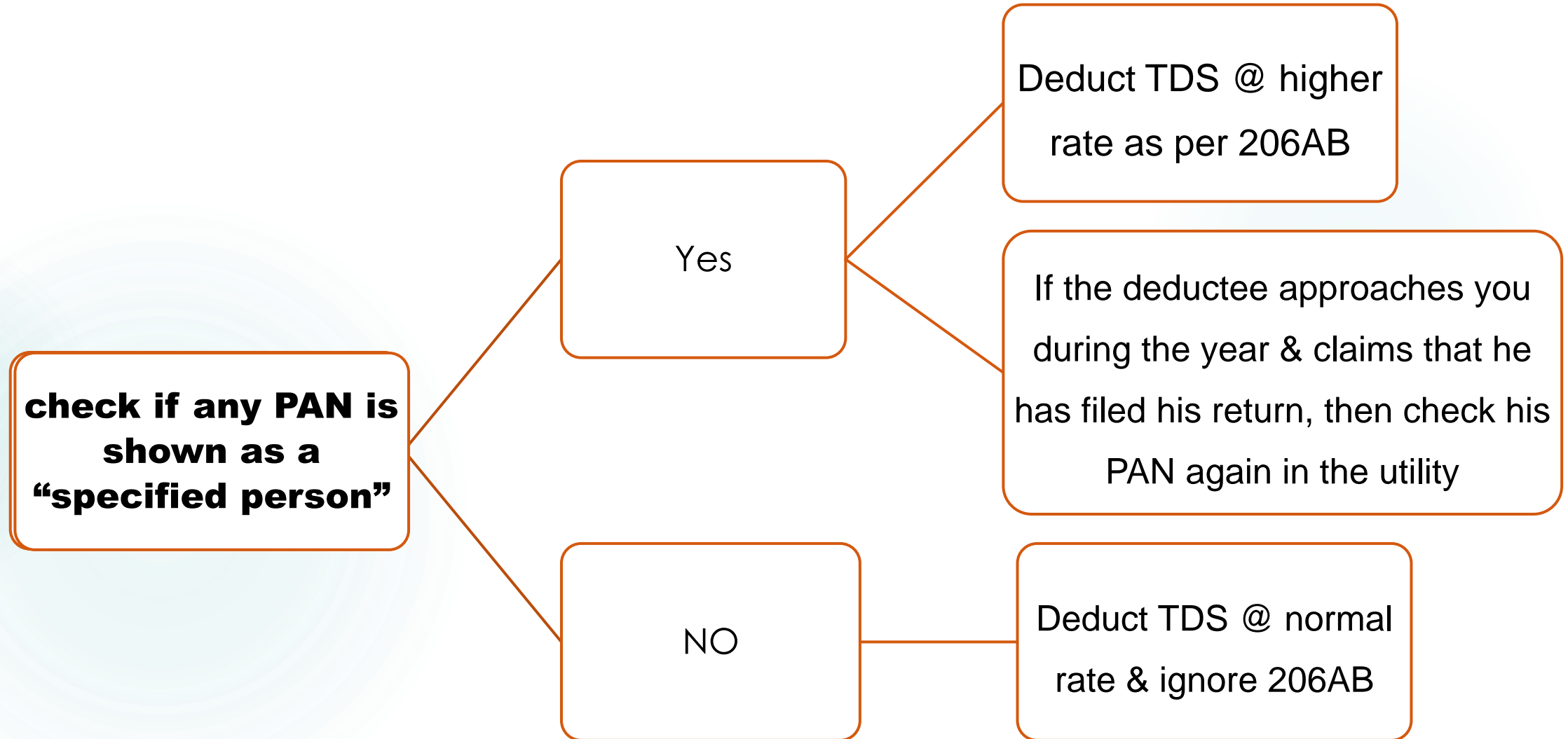
<https://report.insight.gov.in>

Circular No. 11 of 2021

- The utility has captured the information about non filers for FY 2018-19 & 2019-20 as on 1-4-2021 and has fed that into the utility
- Anyone who has a PAN and who has not filed the return of income for **BOTH** the years mentioned above as on 31-3-2021 will figure in this list of “specified persons”
- The deductor has to upload the PANs of all his deductees into the utility once and he will get a ready made list of the persons who are defaulters. All others in their list of deductees are safe and the deductor need not look at them again during the year

How to check the utility?

After feeding all the PANs in the utility,



Output of the utility

- Once the PAN is fed into the utility, the processing takes place extremely quickly and the output report is generated.
- At a time, upto 10,000 PANs can be uploaded into the utility.
- There is a CSV import facility available to import bulk PANs
- The output report tells which PAN belongs to a non compliant deductee. The report also informs about linking of PAN and Aadhaar

Rate or rates in force

Often, there is confusion or ignorance about this term “rates in force”

Section 2(37A) defines the term as “rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year”.

The rates of taxes are always mentioned in the First Schedule to every Finance Act.

Declarations from payees

- Many entities have sent emails / letters to various people and have pointed out the provisions of section 206AB & asked for declarations about filing the return.
- This is not required. In my view, such declarations are of no use. It is the information contained in the utility that is relevant
- We need to educate our clients about this matter. Neither the deductees nor the deductors should be made to go through unnecessary compliances because of the new section. That is why the department has given us the utility to check

Controversy over 139(1) & 139(4)

*(3) For the purposes of this section "specified person" means a person who has not filed the returns of income 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 which the time limit of filing return of income under sub-section (1) of section 139 has expired**; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:*

Some people are of the view that if a return is filed late then that is not to be considered and the deductee would be covered by section 206AB.

This view is not correct. The reference to section 139(1) is only to decide which two years are to be taken into consideration.

Defective return or void return?

The intention of the section seems to be to punish those who have a PAN and who have a substantial amount of TDS (and thereby substantial income) if they don't file their tax returns.

That being the case, it is obvious that only valid returns filed would be taken into consideration. If any return is defective or otherwise void, the same would be treated as NOT filed.

What if ITR for AY 2021-22 is filed?

In 206AB & 206CCA, reference is to the two assessment years for which time limit u/s.139(1) has elapsed.

In my view, AY 2021-22 is not relevant for applicability of 206AB/206CCA during FY 2021-22

In any case, the utility will clearly not incorporate that information

During the year what to do?

- The original exercise of searching is to be done on 1st July 2021 and then on 1st April 2022
- During the year, if a new deductee is to be paid then obviously, a search will need to be carried out for this person
- If a “specified person” approaches the deductor during the year and claims that he has filed his return then the deductor needs to verify the utility again for that person. **ONLY IF THE UTILITY SHOWS HIM TO BE A NON SPECIFIED PERSON, can 206AB/206CCA be not applied in his case**

Non residents are not covered by the sections

NRs are not covered unless they have a PE in India for the purpose of 206AB & 206CCA.

Recently, we have the new IT Intermediary Rule as per which, it is mandatory for a social media company to have a resident officer in India. Whether appointment of such officers would constitute a PE in India is the moot question?

Interplay between 206AA & 206AB

Sr. No.	Section 206AA – no PAN	Section 206AB – non furnishing of ITR
1	The rate specified in the provisions of the Act	Twice the rate specified in the provisions of the Act
2	The rate or rates of tax in force	Twice the rate or rates of tax in force
3	At the rate of 20%	At the rate of 5%
	Higher of the above (X)	Higher of the above (Y)
	Conclusion: Higher of (X) or (Y) shall be the rate for 206AB	

Impact of 206AA & 206AB on small payees

Rate u/s. 194C	Rate u/s. 206AA	Rate u/s. 206AB
1%	20%	5%
Rate u/s. 194J	Rate u/s. 206AA	Rate u/s. 206AB
10%	20%	5%

To conclude

Admittedly, the government has been late in bringing out the compliance check utility

Admittedly, many deductors have lost patience and have tried to obtain data from deductees directly.

We know that what is relevant is the data in the utility and not the declaration.

Therefore, let us educate our clients in complying with these new provisions correctly without putting deductees to further inconvenience

Reference material

Section 194Q

[Deduction of tax at source on payment of certain sum for purchase of goods.¹⁰

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.

(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.]

Section 206AB

206AB. (1) Notwithstanding anything contained in any other provisions of this Act, where tax is required to be deducted at source under the provisions of Chapter XVIIIB, other than [section 192](#), [192A](#), [194B](#), [194BB](#), [194LBC](#) or [194N](#) on any sum or income or amount paid, or payable or credited, by a person (hereafter referred to as deductee) to a specified person, the tax shall be deducted at the higher of the following rates, namely:—

- (i) at twice the rate specified in the relevant provision of the Act; or
- (ii) at twice the rate or rates in force; or
- (iii) at the rate of five per cent.

(2) If the provisions of [section 206AA](#) is applicable to a specified person, in addition to the provision of this section, the tax shall be deducted at higher of the two rates provided in this section and in [section 206AA](#).

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income 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 which the time limit of filing return of income under sub-section (1) of [section 139](#) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided that the specified person shall not include a non-resident who does not have a permanent establishment in India.

Explanation.—For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.]

Section 206CCA

[Special provision for collection of tax at source for non-filers of income-tax return.]

206CCA. (1) *Notwithstanding anything contained in any other provisions of this Act, where tax is required to be collected at source under the provisions of Chapter XVII-BB, on any sum or amount received by a person (hereafter referred to as collectee) from a specified person, the tax shall be collected at the higher of the following two rates, namely:—*

- (i) at twice the rate specified in the relevant provision of the Act; or*
- (ii) at the rate of five per cent.*

(2) If the provisions of [section 206CC](#) is applicable to a specified person, in addition to the provisions of this section, the tax shall be collected at higher of the two rates provided in this section and in [section 206CC](#).

(3) For the purposes of this section "specified person" means a person who has not filed the returns of income 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 collected, for which the time limit of filing return of income under sub-section (1) of [section 139](#) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in each of these two previous years:

Provided *that the specified person shall not include a non-resident who does not have a permanent establishment in India.*

Explanation.—*For the purposes of this sub-section, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.]*

Thank You

You can contact me on:

patelameet@hotmail.com



@patelameet