

# TAX FLASH NEWS

18 May 2022

## CBDT issues circular amending functionality of 'Compliance check for Section 206AB & 206CCA'

### Executive summary

In order to widen and deepen the tax base and to nudge taxpayers to furnish their return of income, the Finance Act, 2021 introduced two new provisions<sup>1</sup> with effect from 1 July 2021 which prescribes tax deduction (Section 206AB) or tax collection (Section 206CCA) at a higher rate in the case of certain non-filers of return of income (specified persons). The higher rate is twice the prescribed rate or 5 per cent, whichever is higher. 'Specified person' was defined to mean a person who has not filed the returns of income for both the two assessment years relevant to the two previous years immediately preceding the financial year in which tax is required to be deducted or collected, for which the time limit for filing return of income under Section 139(1) has expired. Further, the aggregate of tax deducted at source and tax collected at source in his case is INR 50,000/- or more in each of those two previous years.

To implement these provisions, the tax deductor/collector is required to do due diligence to satisfy himself if the deductee/collectee is a specified person. This would have resulted in an extra compliance burden on such tax deductor/collector. To ease this compliance burden, the Central Board of Direct Taxes (CBDT) had issued a Circular<sup>2</sup> providing a new functionality 'Compliance check for Sections 206AB & 206CCA'. The Circular eased the burden of the tax deductors/collectors by ensuring that the deductors/collectors need to check the PAN in the functionality at the beginning of the financial year without there being any need to check the PAN of the non-specified person again during that financial year. The tax deductor/collector can feed the single PAN (PAN search) or multiple PANs (bulk search) of the deductee/ collectee and can get a response from the functionality if such deductee/collectee is a specified person.

Subsequently, the Finance Act 2022 (with effect from 1 April 2022) reduced 2 years requirement to 1 year by amending Sections 206AB and 206CCA to provide that 'specified person' to mean as a person who has not filed its return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected and the amount of tax collected and deducted at source is INR 50,000 or more in the said previous year. Further, it was provided that the provisions of Section 206AB shall not apply in case of deduction of tax on transfer of virtual digital assets (VDA) under Section 194S in specified cases.

Recently, the Central Board of Direct Taxes (CBDT) has issued a Circular<sup>3</sup> amending its earlier Circular<sup>4</sup> which provides functionality for compliance of Sections 206AB and 206CCA.

### CBDT Circular

In accordance with the above amendments, the logic of functionality has been amended as follows:

- A list of specified persons is prepared as on the start of the financial year 2022-23, taking the previous year 2020-21 as the relevant previous year. List contains names of the taxpayers who did not file a return of income for the assessment year 2021-22 and have aggregate of TDS and TCS of INR 50,000/- or more in the previous year 2020-21.
- During the financial year 2022-23, no new names will be added in the list of specified persons. This is a taxpayer-friendly measure to reduce the burden on the tax deductor and collector of checking PANs of non-specified persons more than once during the financial year.

<sup>1</sup> Section 206AB and Section 206CCA of the Income-tax Act, 1961

<sup>2</sup> Circular No.11 of 2021, dated 21 June 2021

<sup>3</sup> CBDT Circular No. 11/2021, dated 17 May 2022

<sup>4</sup> Circular No.11 of 2021, dated 21 June 2021

- If any specified person files valid return of income (filed & verified) for the assessment year 2021-22 during the financial year 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing a valid return of income for the financial year 2022-23.
- If any specified person files a valid return of income (filed & verified) for assessment year 2022-23, his name would be removed from the list of specified persons. This would be done on the due date for filing return of income for AY 2022-23 or on the date of actual filing of valid return (filed & verified), whichever is later.
- If the aggregate of TDS and TCS, in the case of specified person, in the previous year 2021-22 is less than INR 50,000/-, his name would be removed from the list of specified persons. This would be done on the first due date under Section 139(1) falling in the financial year 2022-23. For the financial year 2022-23, this due date is 31 July 2022.
- Belated and revised TCS & TDS returns of the relevant financial year filed during the financial year 2022-23 would also be considered for removing persons from the list of specified persons on a regular basis.

The deductor or the collector may check the PAN in the functionality at the beginning of the financial year and then he is not required to check the PAN of the non-specified person during that financial year. The list would be drawn afresh at the start of each financial year and the above process would have to be repeated.

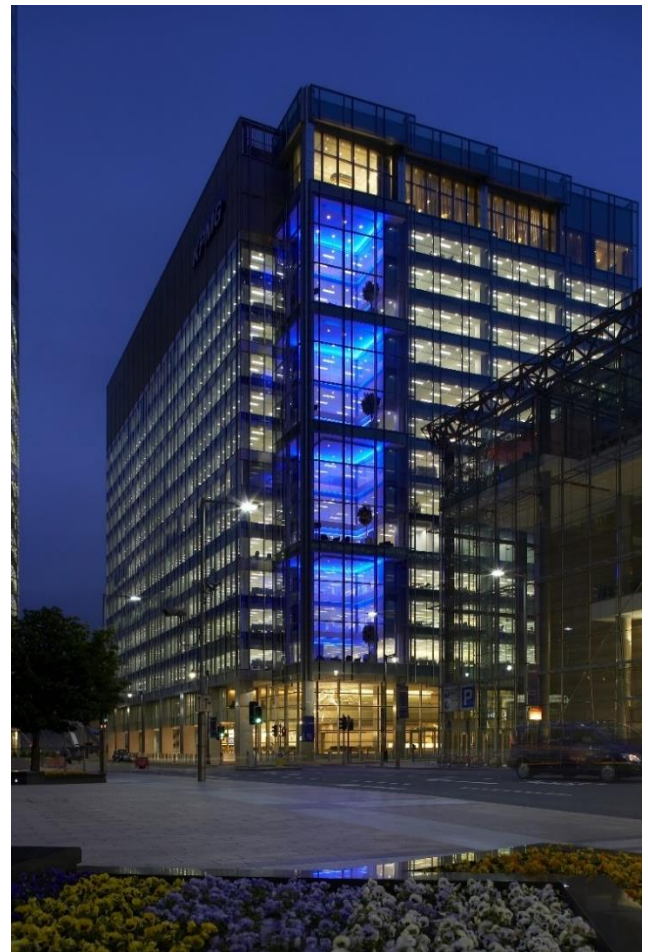
As per the provisos of Section 206AB and 206CCA, the specified person shall not include a non-resident who does not have a Permanent Establishment (PE) in India. Since the functionality does not have the visibility of non-resident having PE in India, there is likelihood that non-resident having PE in India may not get reflected in this list. Tax deductors and collectors are expected to carry out necessary due diligence in respect of non-residents about the applicability of Section 206AB and Section 206CCA on them.

CBDT clarified that even though this user-friendly functionality was provided to tax deductors/collectors and explained through a circular, some of the deductors/collectors were asking the deductee/collectee to produce evidence of their filing of return of income. It may be again highlighted that this functionality has been developed to ease compliance for tax deductors/collectors. Asking the deductee/collectee to file evidence of furnishing of their return will defeat the purpose of this taxpayer-friendly measure. All tax deductors/collectors shall take a note of this circular for compliance.

## Our comments

The functionality will ensure that deductors or collectors check the PAN in the functionality at the beginning of the financial year without there being any need to check the PAN of the non-specified person again during that financial year. The move would help taxpayers to comply with ease and also leave room for non-compliant specified persons to comply during the year.

CBDT clarified that since the functionality does not have the visibility of non-resident having a PE in India, there is likelihood that non-resident having a PE in India may not get reflected in this list. Therefore, tax deductors and collectors should carry out necessary due diligence in respect of such non-residents.



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