

IAMAI Submission on Section 206AA, Section 206AB and section 206CCA of the Income-tax Act, 1961

The Internet and Mobile Association of India ("IAMAI") is a not-for-profit industry body and we play a key role in ensuring the growth and sustainability of the digital industry.

Finance Bill 2021 introduced changes in the Tax Deduction at Source (TDS)/Tax Collection at Source (TCS) through Section 206AA, **Section 206AB and section 206CCA in the Income-tax Act, 1961 ("ITA")**, which will be applicable from 1 July 2021. IAMAI on behalf of its members would like to share some concerns related to compliance obligations imposed by these sections. While we understand and support the intent behind the amendments, which is to target greater tax compliance and encourage filing of income-tax returns ("ITR") and linking of PAN and Aadhaar, there are some aspects which remain beyond the ability of the industry to comply with.

Our submission highlights some of the key concerns about the proposed changes. Our comments and recommendations have been set out below.

IAMAI Submission:

For the reasons set out below, we humbly request that till such time appropriate digital facilities are made available to taxpayers by the tax department, the obligations under section 206AA, section 206AB and section 206CCA be deferred.

As a quick summary, post 1 July 2021, where the individual/ HUF fails to link Aadhaar number with PAN using the online facility available on the income-tax portal, PAN will become inoperative. In such a situation, the deductor will need to verify whether PAN has been duly linked to Aadhaar or not, before withholding tax on payment to be made to the deductees. In case, PAN & Aadhar are not linked, a higher withholding tax under section 206AA is required to be done.

Further, the Finance Act, 2021 introduced section 206AB and section 206CCA mandating higher rates for tax deducted at source ("**TDS**") and tax collected at source ("**TCS**"), respectively, when making payments to certain persons:

- (i) who have not filed their ITR for two previous years immediately prior to the previous year in which tax is required to be deducted and the time limit for such filing has expired; and
- (ii) the aggregate of TDS or TCS in their case is rupees fifty thousand or more in each of those two years.

In case the above two conditions are fulfilled the TDS / TCS rates would be higher of the following rates:

TDS under section 206AB	TCS under section 206CCA
1. Twice the rates specified in the relevant provision; or 2. Twice the rate or rates in force; or 3. Five percent	1. Twice the rates specified in the relevant provision; or 2. Five percent

We seek the liberty to highlight few key operational issues which may arise for the Industry in course of compliance with these provisions:

Section 206AA

- The deductor would need to have a single window verification on the income-tax e-filing portal or TRACES portal to verify PAN – Aadhaar linkage status by inserting only PAN details as collated by the deductor:

1. Currently, the facility available on the income-tax e-filing portal requires a deductor to insert both, PAN and Aadhaar in order to verify the linkage. However, in absence of the online facility on the income tax portal to verify the linkages by inputting only the PAN details of the deductee, the deductor would not be in a position to verify. So, it would be our earnest request to the Department to provide a single window facility for the Deductor to verify (by inputting PAN) the linkage of PAN and Aadhaar. Non-availability of such a facility is causing genuine hardship to taxpayers, being the Deductor not able to carry out such verification of each of the deductees.
2. Once such e-facility is introduced and functional, request you to grant additional time of at least 6 months to enable the deductors to verify PAN – Aadhaar linkage status for all its deductees and to follow up with each of them where the linkage is still pending. This is a very tedious exercise given that in the case of certain businesses viz. e-commerce companies, the number of individuals e-commerce participants are very substantial and it would take significant time to check the linkage of PAN & Aadhaar for each such individuals e-commerce participant for doing correct tax withholding.
3. The consequences of short-deduction of taxes, should not be unduly put on the deductor in cases where PAN becomes inoperative and the deductor should not be treated as an “assessee in default” as per provisions of section 201 of the Act till sufficient time is provided for undertaking necessary due diligence on verifying the linkages
4. It is further noticed that due to the second covid wave which has impacted the entire nation and most of the taxpayers are not able to visit Aadhaar kendras to link their PAN & Aadhaar wherever the information as per PAN & Aadhaar is not matching. In view of the same, the provisions of linking PAN & Aadhaar should also be extended till 31 March 2022 so that taxpayers can link their PAN & Aadhaar and are not adversely impacted by a higher tax withholding.

Section 206AB and 206CCA

- The deductor / collector would need to have knowledge of following factors to decide whether higher rates of TDS / TCS would be applicable. We have also set out the related challenges in relation to each of those factors below where suitable clarifications may be issued:

1. ITR filing status of the deductee / collectee for the previous two years:

- a. Since the deductor / collector will not have access to this information, relevant ITR forms filed / ITR acknowledgements received by deductee / collectee may need to be manually reviewed for confirming satisfaction of this condition which could be a time consuming exercise.
 - b. If ITR is not filed, the deductor / collector will not have the information on whether the deductee / collectee were mandatorily required to furnish the ITR in the relevant year as not all taxpayers are required to file returns. For instance, taxpayers with income below the exemption limit are not required to file ITRs. Further, if certain companies are incorporated recently, there may not have filed the ITR for previous two years. The section does not expressly state that the obligation to withhold taxes are connected to situations wherein ITRs are required to be filed under the ITA but they have not been, although that clearly appears to be the intent. This may potentially cause some confusion and is worth being clarified. Accordingly, suitable clarifications may be issued whether the provisions are applicable if the deductee/collectee is not liable to file the Return of Income.
 - c. Further, we understand that even if
 - i. ROI is filed in **any one** of the assessment years preceding the year in which tax is required to be deducted/ collected (for which time-limit for filing under section 139(1) has expired), or
 - ii. If aggregate of TDS + TCS in **any one** of the AY's preceding the year in which tax is required to be deducted/collected (for which time-limit for filing under section 139(1) has expired) is less than Rs. 50,000, the provisions of section 206AB/206CCA are not applicable. It is requested that a suitable clarification with illustrations be issued in this regard.
2. Some of the taxpayers may not be comfortable to share their ITR details due to confidentiality or any other reasons.
 3. Further, the deductor/collector would be required to monitor the above filing status every year, which would involve time and efforts in the absence of any automation.

4. Whether ITR has been filed within the time limit:

- a. If ITR is not filed, based on the status of the taxpayer, whether the time limit for such filing of tax return has expired. Especially since the time limits could vary between July 31, October 31 or November 30 of the following year depending on whether a taxpayer is subject to audit or transfer pricing for example. For eg. There may be

situations where 2 previous years are relevant for checking return filing status for payment to be made in one financial year on different dates. Assuming that the due date of filing ITR for a particular payee is 31 October 2021. The relevant AYs to be tested for determining the non-compliance in return filing and the TDS limit will change as under:

Period from	Period upto	Relevant AYs
1 April 2021	31 October, 2021	AY 2020-21 and AY 2019-20
1 November 2021	31 March 2022	AY 2021-22 and AY 2020-21

There may be situations where the deductee / collectee may choose to file for a belated return under section 139(4) of the ITA, however section 206AB and section 206CCA do not provide for any carve out for such circumstances and penalize the belated filers. Additionally, in special circumstances this year, there have been many ad hoc extensions of time limits for filing of tax returns which may have to be tracked.

5. Whether aggregate TCS and TDS amounts exceeds INR 50,000 in each of the previous two years:

- a. In case ITR is not filed, it would be difficult to assess whether the aggregate amount of TDS and TCS in each of the previous two years exceeds INR 50,000. In such cases, Form 26AS would be required to confirm TDS / TCS aggregate amount. Since Form 26AS also contains information about other streams of income, a deductee / collectee may not be willing to share which again may lead to higher rates even in genuine cases.
 - b. Further, we understand that the limit of Rs. 50,000/- is with regard to the payee and one does not need to check the limit qua the tax deducted or collected at source by the deductor on transactions with payee. It is requested that a suitable clarification is issued in this regard.
- As a general approach, a deductor / collector can be held liable for failure to deduct taxes at an appropriate rate, in which case simple interest at 1% per month and even penalty may be imposed. Hence, in absence of sufficient and relevant information, the deductor / collector may insist on higher rates even in genuine cases. However, we believe that in the current situation of the ongoing pandemic, any increase in transaction costs would be counterproductive to consumer, seller and the economy as a whole.
 - As per the existing framework, the deductor / collector does not have any mechanism or platform to confirm for the above factors, while similar mechanisms have been put in place for other withholding obligations under section 194N of the ITA¹. A functionality similar to this would enable the industry to accurately comply with the provisions.

¹ The CBDT by way of press release dated July 12, 2020 has released a functionality for the Banks and Post Offices to automatically determine rate of TDS to be deducted merely by entering the PAN of the person withdrawing the cash. Similarly, CBDT has also issued Order No. 225/136/2020/ITA.II dated August 31, 2020 for furnishing information about ITR filing status to the Scheduled Commercial Banks ("SCBs") whereby they can get ITR filing status by PAN, in bulk mode.

- **In the absence of any automated mechanism enabled by the Income-tax department, the deductor/collector would need to manually collect and validate the supporting documents which will significantly increase the compliance burden. Such a process is not practicable since review and verification of withholding liability for each payment would involve a large volume of transactions.**

Recommendations

In light of the above-mentioned hardships which the deductors/collectors may face in complying with the provisions of section 206AA, section 206AB and section 206AAC respectively, and since the provisions come into effect from the July 1, 2021 itself, we request intervention of the CBDT at the earliest specifically:

1. To provide a single window for the deductor to verify PAN – Aadhaar linkage by inserting only PAN details of the deductee and verify the status of the linkage. Post such window is functional, grant additional time of at least 6 months for deductor to configure & test its system and also to run the process for verification and validation of PAN – Aadhaar linkage status and not treat the deductor as “assessee in default” till such time.
2. To extend the PAN & Aadhaar linking deadline from 30 June 2021 to 31 March 2022 in view of the second covid wave to enable taxpayers to visit Aadhaar centers to link their PAN & Aadhar.
3. To release a utility/functionality/ mechanism for the deductors/collectors similar to the one provided to banks / post offices / SCBs for the purpose of section 194N, for determining the applicability of provisions of section 206AB/206CAA and appropriate TDS / TCS rate / ITR filing status. Alternatively, CBDT may consider building an API mechanism to validate ITR status similar to the API mechanism in place for GST returns. We are very pleased to understand that the department is developing a ‘Compliance Check Utility’ for deductors/collector for determining applicability of section 206AB/206CCA (including bulk mode) and will be made available soon. Till such time an appropriate tech based mechanism is available, it is humbly requested that the applicability section 206AB/206CAA should be postponed. Further, once the required utility is enabled, Industry should be provided a sufficient time of about 6 months to configure and test the systems
4. To release guidance/FAQs regarding compliance with the aforementioned provisions considering the operational difficulties highlighted above.