

VCM on Recent Changes in TDS & TCS Provisions, Tax Audit Report
& E-Filing Portal of Income Tax Department- by Mayank Mohanka,
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Gurugram Branch of NIRC

The Institute of Chartered Accountants of India
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Virtual CPE Meeting on

Recent Changes in TDS & TCS Provisions, E-Filing Portal & Tax Audit Report

 Saturday, 19th June 2021 | 4 PM – 6 PM

Guest Speaker



CA. Mayank Mohanka



Registration Link :
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PART 1: RECENT CHANGES IN TDS & TCS PROVISIONS

The **Finance Act 2021** has inserted two new sections concerning TDS related provisions and these are:

- (i) Section 194Q (TDS on Purchase of Goods)
- (ii) Section 206AB (TDS at Higher Rates in case of Non ITR Filers)

I. Section 194Q (TDS on Purchase of Goods)

Frequently Asked Questions (FAQs) on Section 194Q

1. Who is liable to deduct tax u/s 194Q and at what rate?

A **buyer** purchasing goods from a **resident seller** and carrying on a business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased by him is liable to deduct tax at source at the rate of 0.1% of the purchase value exceeding Rs. 50 lakhs, if the seller has furnished his PAN, otherwise, the tax shall be deducted at the rate of 5%, u/s 194Q w.e.f. 1st July 2021.

Thus, for the current FY 2021-22, the liability to deduct tax under this provision will arise if the turnover of the purchaser was more than Rs. 10 crores in the financial year 2020-21.

Further, section 194Q is applicable on all specified buyers whether Individuals, HUFs, AOP, BOI, Firm, LLP or Company.

Only Purchase of **Goods** attract TDS u/s 194Q and not Services

2. From which date the threshold limit of Rs. 50 lakhs will be computed?

The Finance Act, 2021, has inserted Section 194Q, with effect from 01-07-2021, to provide for the deduction of tax on certain purchases. The TDS has to be deducted if the value or aggregate purchase value exceeds Rs. 50 lakhs during the previous year. Whether this limit of Rs. 50 Lakh for deducting TDS shall be reckoned from 01-04-2021 or 01-07-2021?

Similar confusion arose when Section 206C(1H) was introduced by the Finance Act, 2020, with effect from 01-10-2020. In respect of which the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the threshold of Rs. 50 lakhs is with respect to the previous year, calculation of sale consideration for triggering TCS under this provision shall be computed from 01-04-2020. Hence, if a seller has already received Rs. 50 lakhs or more up to 30-09-2020 from a buyer, TCS under this provision shall apply on all receipts of sale consideration on or after 01-10-2020.

Applying the same principle, it can be concluded that threshold of Rs. 50 lakhs shall be computed from 01-04-2021. Thus, if a buyer has already purchased goods of value

Rs. 50 lakhs or more up to 30-06-2021 from a seller, TDS under this provision shall apply on all purchases on or after 01-07-2021.

3. Which is the base year for the threshold limit of Rs.50 lakhs?

Limit of 50 lakhs is considered in each financial year. The 50 lakhs exemption is for one financial year for a single seller.

Illustration

Buyer	T/o in 2020-21	T/o in 2021-22	Purchase or Payment from 01.04.2021 to 30.06.2021	Purchase or payment from 01.07.2021 to 31.03.2022	Requirement for TDS u/s 194Q
Mr. X	12 Crore	8 Crore	40 Lac	60Lac	TDS @ 0.1% on 50 Lac (Note)
Mr. X	10 Crore	25 Crore	70 Lac	90 Lac	No TDS Required as in last year T/o not exceeded Rs. 10 Crore
Mr. X	20 Crore	35 Core	80 Lac	10 Lac	TDS @ 0.1% on 10 Lac
Mr. X	20 Crore	40 Crore	10 Lac	55 Lac	TDS @ 0.1% on 15 Lac
Mr. X	20 Crore	50 Crore	65 Lac	80 Lac	TDS @0.1% on 80 Lac

Note: - Purchase or payment made before 01.07.2021 shall not be considered for TDS deduction, however, it will be considered for checking the limit of Rs. 50 Lac in a year. So, purchases made up to 30.06.2021 shall not be liable to TDS.

4. When tax shall be deducted under this provision?

The tax shall be deducted from the purchases made by a buyer if the following conditions are satisfied:

- There is a purchase of goods from a resident person;
- Goods are purchased for a value or aggregate of value exceeding Rs. 50 lakhs in any previous year; and
- The buyer should not be in the list of persons excluded from the provision for deduction of tax.

The tax shall not be deducted under this provision if the tax is deductible or collectible under any other provision except Section 206C(1H). Thus, if a transaction is subject to

TCS under Section 206C(1H), the buyer shall have the first obligation to deduct the tax. If he does so, the seller will not have any obligation to collect the tax under Section 206C(1H).

5. What shall be the timing of deduction of tax?

Tax is required to be deducted 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'.

6. Once the consideration for purchase of goods exceeds INR 50 Lakh, is the TDS required to be made on the entire consideration or only on the consideration that exceeds INR 50 Lakhs?

Sub-section (1) of section 194Q provides for deduction of tax at 0.1% of the sum exceeding INR 50 lakh in a financial year. Thus, the tax shall be deducted at source only on that consideration that exceeds INR 50 lakh.

For instance, in case where the first purchase was made for INR 25 lakh and the second purchase was made for INR 30 lakh, the TDS should be made only on the second purchase and only on the amount of 5 lakh (i.e. 25 lakh + 30 lakh - 50 lakh) @ 0.1% amounting to Rs. 500. The threshold of INR 50 lakh shall apply year-wise.

7. What is the Interplay between TDS u/s 194Q and TCS u/s 206C (1H)

TDS u/s 194Q has been inserted by Finance Act 2021 and it is applicable with effect from 01.07.2021. TCS u/s 206C(1H) has been added vide Finance Act 2020 which came into effect from 01.10.2020.

These two provisions look confusingly similar. However, there are differences between the two:

Comparison between 194Q and 206C(1H)

Basis of comparison	TDS on purchase of goods [Section 194Q]	TCS on Sale of goods [Section 206C(1H)]
Who is liable for deduction/collection	Buyer is liable to deduct the tax	Seller is liable to collect the tax
Turnover limit of deductor or collector	The total sales, gross receipts or turnover of the buyer from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased	The total sales, gross receipts or turnover of the seller from the business should exceed Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are sold
Effective date	1 st July 2021	1 st October 2020
Rate	0.1%	0.1% (0.075% for FY 2020-21)
Amount on which tax	On the amount of purchase	On the amount of sale consideration

to deducted/collected	be in excess of Rs. 50 lakhs	received in excess of Rs. 50 lakhs
PAN not available	5%	1%
Time of deduction/collection	At the time of credit or payment, whichever is earlier	At the time of receipt
Exclusions	Not applicable if a. Tax is deductible under other provisions of the act b. Tax is collectible under 206C other than 206C (1H)	If Buyer is a. Importer of goods b. Central/State Government, Local Authority c. An embassy, High Commission, legation, commission, consulate and trade representation of a foreign state
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
When to deposit/collect	Tax so deducted shall be deposited with government by 7th day of subsequent month	Tax so collected shall be deposited with government by 7th day of subsequent month
Quarterly statement to be filed	26Q	27EQ
Certificate to be issued to seller/buyer	FORM 16A	FORM 27D

8. Where a transaction is covered by both the provisions - TDS under Section 194Q and TCS under Section 206C(1H), who shall be liable for deduction/collection of tax?

Second Proviso to Section 206C(1H) provides that if the buyer is liable to deduct tax under any other provision on the goods purchased by him from the seller and has deducted such amount, no tax shall be collected on the same transaction.

Section 194Q(5) provides that no tax is required to be deducted by a person under this provision if tax is deductible under any other provision or tax is collectable under section 206C [other than a transaction on which tax is collectable under Section 206C(1H)].

Though Section 206C(1H) excludes a transaction on which tax is actually deducted under any other provision (which will cover Section 194Q as well), but Section 194Q(5) does not create a similar exception for a transaction on which tax is collectible under Section 206C(1H).

Thus, the buyer shall have the primary and foremost obligation to deduct the tax and no tax shall be collected on such transaction under Section 206C(1H). However, if the buyer makes a default, the liability to collect the tax gets shifted to the seller.

Example 1

Particulars (assumed that the transactions have occurred after 01 st July 2021)	Scenario 1	Scenario 2	Scenario 3
Turnover of Seller (In cr.)	11	10	12
Turnover of Buyer (In cr.)	10	1	12
Sale of goods (In cr.) (A)	2	2	2
Sales consideration paid during the year (In cr.) (B)	1	1	1
Who is liable to deduct or collect tax?	Seller	Buyer	Buyer
Rate of Tax (Seller/Buyer has provided PAN and has satisfied section 206AB)	0.1%	0.1%	0.1%
Amount on which tax to be deducted or collected (In Cr.) [Amount in excess of Rs. 50,00,000 is the taxable amount]	0.5 [(B) - 0.5]	1.5 [(A) - 0.5]	1.5 [(A) - 0.5]
Tax to be deducted or collected	5,000	15,000	15,000

Example 2

Seller's Turnover (in Crores)	Buyer's Turnover (in crores)	Sale or purchase consideration for goods (after 1st July 2021) (in lakhs)	Taxable/amount	Seller/Buyer PAN	TDS	TCS	Obligated Person to deduct or collect tax	Relevant Section
7	15	55	5	Yes	0.10%	NA	Buyer	Section 194Q
15	6	59	9	Yes	NA	0.10%	Seller	Section 206C(1H)
18	16	65	15	Yes	0.10%	NA	Buyer	Section 194Q
5	11	53	3	No	5%	NA	Buyer	Section 194Q/ 206AA
16	7	56	6	No	NA	1%	Seller	Section 206C(1H)/ 206AA

The buyer and the seller might be in an uncertain condition as to who should deduct the tax. The primary responsibility lies on the purchaser to deduct the tax. To avoid the ambiguous situation, the buyer may provide the declaration to the seller stating that he would be deducting the taxes at the time of booking the invoice or at the time of making the advance payment, wherever applicable.

The seller should also provide a declaration stating that he has filed the ITR for the two relevant previous years as mentioned in section 206AB.

9. Is a buyer importing goods from outside India required to deduct tax at source under this section?

Section 194Q provides that any person, being a buyer who is responsible for paying any sum to any resident, being a seller, is required to deduct tax at source under this provision. Thus, the obligation to deduct tax under this provision arises only when the payment is made to a resident seller.

As in the case of import, the seller is a non-resident, the buyer will not have any obligation to deduct tax under this provision. The buyer may take a declaration regarding the residential status of the seller. However, the TDS under Section 195 or payment of Equalisation Levy may be required in respect of such transaction. In the case of purchase of goods through High Seas sales transaction, this exception may not be applicable as the High Seas Seller may be a resident.

10. Whether tax is required to be deducted under Section 194Q from the goods exported abroad?

Liability to deduct tax under this provision arises only when the payment is made to a resident seller. Residential status of the buyer, who is making payment, is not relevant under this provision.

As in the transaction of export of goods, the seller is a resident but the buyer is a non-resident. Thus, the liability to deduct tax under this provision may arise on the non-resident buyer. However, it is a cumbersome exercise of determining the satisfaction of all the conditions of section 194Q, section 206AB, availability of PAN, etc. Hope the CBDT/Government come up with necessary clarifications so as to augment the ease of doing business in India.

11. In the absence of any definition of 'goods', what shall be construed as a purchase of goods?

The term 'goods' is not defined in the Income-tax Act. The term 'goods' has wide meaning. Anything which comes to the market can be treated as goods. However, this term 'Goods' has been defined under the Sale of Goods Act, 1930 and Central Goods and Services Tax Act, 2017.

Below is the list of goods as defined under various legislations.

Particulars	CGST Act, 2017	Customs Act, 1962	Sale of goods Act, 1930
Definition of Goods	Every kind of movable property other than services	Inclusive definition to cover all goods	Every kind of movable property
Inclusions	Actionable claims, crops, grass and things attached to land	Vessels, stores, baggage, currency, negotiable instrument & other kind of movable property	Stocks & shares, Crops, Grass and things attached to Land
Exclusions	Money & Securities	-	Actionable claims &

			money
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12. Whether a transaction in securities through stock exchanges shall be subject to TDS under this provision?

When the Finance Act, 2020 introduced Section 206C(1H) to provide for the collection of tax on the sale of goods, concerns have been raised about the applicability of such provision in respect of transactions through stock exchanges (or commodity exchange) as there is no one-to-one contract between the buyers and sellers.

In respect of the above, the CBDT vide Circular No. 17 of 2020, clarified that provisions of Section 206C(1H) shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges or cleared and settled by the recognised clearing corporation, including recognised stock exchanges or recognised clearing corporations located in International Financial Service Centre (IFSC).

Applying the rationale behind such clarification, it is inferred that the CBDT may allow a similar exemption from TDS under Section 194Q as well.

13. Whether TDS to be deducted on purchase of capital goods?

'Goods' means every kind of movable property subject to certain exceptions and inclusions, irrespective of whether it is capital goods or not. Hence TDS to be deducted on purchase of capital goods also.

14. Whether TDS to be deducted if the buyer is in service industry and he purchases goods from a seller?

The explanation of section 194Q describes the meaning of buyer. 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 made.

Section 2(13) of the Income Tax Act, 1961, contains an inclusive definition of the term "business". "Business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture." Hence, we can infer that business includes services also and if the buyer is a service provider, he has to deduct TDS on purchase of goods, if other conditions are satisfied.

15. Whether TDS to be deducted on the purchase of immovable property by a developer?

The immovable property shall not be treated as 'goods'. Consequently, the TDS under section 194Q shall not be deducted from the purchase of immovable property by a developer.

16. When goods are purchased by a customer from an e-commerce participant, would section 194Q apply or 194-O?

Section 194-O was introduced requiring deduction of tax by e-commerce operator while making payment to e-commerce participants. So far as the condition to trigger section 194-O satisfies, tax should be deducted by the e-commerce operator under section 194-O of the Act for the following reasons:

- Section 194Q specifically exempts transactions that are subject to tax withholding under any other provisions of the Act; and
- Section 194-O starts with a non-abstente clause and therefore overrides section 194Q

17. Whether TDS is liable to be deducted on purchase of Jewellery not connected with business?

Tax is required to be deducted by a buyer carrying on business whose total sales, gross receipts or turnover from the business exceeds Rs. 10 crores during the financial year immediately preceding the financial year in which such goods are purchased. There is no condition that the purchases should be connected with the business only. Thus, if a person is falling within the definition of the buyer, tax is required to be deducted even if such purchase is not connected with the business carried on by him.

Jewellery, being a movable property, is covered within the term goods. There is no specific exclusion under Section 194Q for deduction of TDS on purchase of jewellery. Thus, the tax shall be deductible on purchase of jewellery if other conditions are also fulfilled.

However, there might be practical difficulty in deducting the TDS by the purchaser as the purchaser might contend that the jewellery is being purchased for personal use and not for business use. To avoid the difficulty and confusion, clarification from CBDT is awaited.

18. If the buyer has purchased goods from seller worth Rs. 45 lakhs in one financial year and Rs. 40 lakhs in the preceding financial year, and the seller has received Rs. 60 lakhs with respect to the two purchases made by the buyer, whether TDS has to be deducted or TCS has to be collected? (assuming other conditions of section 194Q and section 206C(1H) are satisfied)

Since the buyer has not crossed the threshold limit of Rs. 50 lakhs and the seller has received the amount exceeding the threshold limit of Rs. 50 lakhs, the seller has to collect the tax, if all the conditions of section 206C(1H) are satisfied.

19. Whether additional, allied and out-of-pocket expenses form part of the purchase value of goods?

It is imperative to accurately determine the purchase value as it is relevant both for the applicability of the provision and amount from which tax should be deducted. Where these expenses have been reflected in the purchase invoice itself, they should form part of purchase value. However, more clarity from CBDT is awaited in this regard.

20. Whether TDS is to be deducted on the total invoice value including the GST?

A similar issue has been raised in respect of Section 194J, to which the CBDT vide Circular No. 23/2017, dated 19-7-2017, has clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component. However, such clarification was issued in respect of GST on services only. No such clarification has been issued for GST on goods.

However, in respect of Section 206C(1H), the CBDT vide Circular No. 17, dated 29-09-2020, has clarified that since the collection is made with reference to receipt of the amount of sale consideration, no adjustment on account of indirect taxes including GST is required to be made for the collection of tax under this provision.

Since deduction under Section 194Q is to be made with reference to the purchase value, applying the same principle it can be concluded that GST shall form part of the purchase value, therefore, the TDS is deductible on the purchase value inclusive of GST.

A clarification in this regard from the CBDT would be much appreciated.

21. Whether TDS has to be deducted on advance payment made to the seller?

Section 194Q provides that tax is required to be deducted in the transaction relating to the purchase of goods. It does not mention whether such purchase needs to be affected immediately or at a future date. As the tax is required to be deducted at the time of payment or at the time of credit, whichever is earlier, it should be reasonable to conclude that the

provision may get attracted even if such purchase happens in future.

As long as the intention is to adjust the advance payment against the future purchase of goods, the tax should be deducted at the time of payment or credit, whichever is earlier. If the advance payment is not made with an intention to adjust it against future purchase (deposit or loan) but eventually it is adjusted against the future purchase, no tax is required to be deducted at the time of payment of such advance. In such case liability to deduct tax will arise the moment such advance is adjusted against the purchase value of goods.

In most of the cases the payment of advance would be made only for the purchase of goods, hence it would be appropriate to deduct TDS under section 194Q at the time of payment of advance itself.

22. Whether the amount advanced as a loan to the seller shall come within the ambit of this provision?

The requirement to deduct TDS under this provision arises if the purchase value exceeds the threshold limit during the previous years. The deduction is to be made at the earliest of payment or credit for the purchase of goods. Since the loan advanced by buyers is not a payment towards the purchase of goods, it shall remain outside the purview of this provision.

Hence, there is no requirement to deduct TDS on loan advanced by the buyer.

However, if at any future date, such loan amount is settled against purchased value, the liability to deduct TDS shall arise. The tax shall be deducted on the date on which parties agreed to adjust the loan amount against the outstanding liability.

23. Whether TCS is applicable for the amount collected against invoices raised before 01st July 2021, if all the conditions of section 206C (1H) are satisfied?

Since TDS is applicable only after 01st July 2021, TCS is applicable for the amount collected before 1st July 2021.

24. Whether tax to be deducted on the purchase of goods by one branch from another?

The TDS under this section is required to be deducted by any person, being a buyer, responsible for making payment to the seller for the purchase of goods. Thus, the existence of two distinct parties as 'seller' and 'buyer' is a pre-requisite to construe a transaction as a purchase. The condition of purchase is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.

25. What shall be the treatment of debit note for computation of TDS?

As the tax has to be computed on the purchase value, the adjustment made to the ledger of the seller by issuing the debit note will not have an impact on the tax to be deducted. The position would remain the same if, after the deduction of tax, the seller repays some consideration to the buyer. In such a situation, the amount of purchase value shall not be reduced with the amount so refunded or the debit note so adjusted for calculation of TDS.

26. Whether purchase returns should be adjusted for computing the threshold of INR 50 lakh in a financial year?

The threshold of INR 50 lakh is to be computed considering the consideration paid for 'purchase' of goods and thus, where the goods are returned, the value of such goods shall be reduced for arriving at the threshold of INR 50 lakh. However, such purchase returns ought to have been made on or before the point of tax deduction as the threshold of INR 50 lakh has to be checked at the point of time when liability to deduct at source arises. Any subsequent returns cannot be considered.

27. Applicability of TDS on works contract if single invoice issued?

A construction contract involving supply of goods, labour and other services is now classified as a service under the GST Regulations. However, if a single invoice is issued with no bifurcation into value of goods and services, a question then arises whether the provisions of TDS & TCS are applicable on the single invoice?

Section 194Q (5)(a) provides that the provisions of 194Q shall not be applicable if tax has been deducted under any other provisions of the Act.

Hence if TDS is deducted under any other section on the full invoice amount, (e.g. 194C), then TDS under 194Q is not applicable.

28. If the seller has multiple units, whether purchases made from different units need to be aggregated?

Where tax is required to be deducted at source, the deductee is required to furnish his PAN to the deductor failing which the tax is required to be deducted at higher rates. If the PAN is available, the threshold limit of Rs. 50 lakhs shall be computed in respect of each PAN. In other words, if different units of the seller are under the same PAN, the amount paid or payable to all such units shall be aggregated to compute the limit of Rs. 50 Lakhs.

29. Can a seller apply for the certificate for lower deduction of TDS?

An assessee can apply to the Assessing Officer to issue a certificate for deduction of tax at lower rates, where TDS is applicable under other provisions like 194C, 194J, 194I, etc. Such certificate shall be issued if existing and estimated tax liability of

assessee justifies deduction of tax at a lower rate. Further, certain assessees have an option to file a declaration for nil deduction of tax.

However, the Finance Act, 2021, has not extended the benefit to apply for a certificate for deduction of tax at lower rates or to file declaration for nil deduction in respect of transactions covered under Section 194Q. Hence, the assessee does not have the option to approach the assessing officer to issue a certificate for a lower tax deduction or to file declaration for nil deduction in respect of transactions covered under section 194Q.

30. What shall be consequences for failure to deduct or pay TDS?

If any person, responsible for deduction of tax at source, fails to deduct the whole or any part of the tax or after deduction fails to deposit the same to the credit of the Central government, then he shall be deemed to be an assessee-in-default.

If deductor fails to deduct tax at source, he shall be liable to pay interest at the rate of 1% for every month or part thereof on the amount of tax he failed to deduct. However, if he fails to deposit the tax deducted at source, he shall be liable to pay interest at the rate of 1.5% for every month or part thereof on the amount of tax he failed to deposit to the credit of the Central Govt.

In addition to the above by way of Section 40(a)(ia) of the Act, 30% of the purchase value which was liable for TDS would be disallowed while computing the taxable income of the buyer.

31. Whether buyer shall be treated as assessee in default if the seller pays the tax due on the income declared in the return of income?

Section 201 of the Income-tax Act provides that a deductor, who fails to deduct tax at source, is not deemed to be in default if the payee has considered such amount while computing income in the return and has paid the tax due on such declared income. The deductor will have to obtain a certificate to this effect from a Chartered Accountant in Form No. 26A and submit it electronically.

Thus, the buyer shall not be deemed as assessee-in-default if the seller has taken into account the purchase amount while computing his income and has paid the tax due on the income declared in the return.

32. What is the due date for filing of TDS return?

The statement of tax deducted at source under this provision shall be filed with the Income-tax Department on or before the following due date:

Quarter	Due Date
April- June	31 st July of the Financial Year
July- September	31 st October of the Financial Year
October- December	31 st January of the Financial Year
January- March	31 st May of the financial year immediately following the financial year in which deduction is made

33. What shall be consequences of non-filing of TDS return?

If there is a delay in filing of TDS return, the late filing fee shall be payable under Section 234E. The fee for default in furnishing the TDS/TCS Statement shall be levied at the rate of Rs. 200 per day during which such failure continues. However, the

amount of fee shall not exceed the total amount deductible or collectable, as the case may be. The fee shall be payable before submission of the belated TDS/TCS Statement. If a person fails to file the TDS return or does not file it by the due dates, he shall be liable to pay penalty under Section 271H. The penalty under Section 271H is also levied in case of furnishing of inaccurate information under TDS return. The minimum amount of penalty for failure to furnish TDS return or providing inaccurate information therein is Rs. 10,000 which can go up to Rs. 1,00,000.

(II) TDS AT HIGHER RATES IN CASE OF NON ITR FILERS (SECTION 206AB)

Section 206AB provides that:

- (a) Notwithstanding anything contained in any other provisions of this Act;
- (b) Where tax is required to be deducted at source under the provisions of Chapter XVII-B other than Sections 192, 192A, 194B, 194BB, 194LBC or 194N;
- (c) On any sum or income or the amount;
- (d) Which is paid, or payable or credited, by a person to a specified person;
- (e) The tax shall be deducted at a higher rate.

The section provides that the "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 section 139(1) has expired; and the aggregate of tax deducted at source and tax collected at source in his case is Rs. 50,000 or more in each of these two previous years. However, the specified person shall not include a non-resident who does not have a permanent establishment in India.

Non-obstante clause

The provisions of Section 206AB overrides all other provisions of the Income-tax Act. It will apply even if the assessee has lower or nil TDS certificate or he has filed a declaration under Section 197A for non-deduction of tax or he is otherwise not liable to file the return of income. However, this provision will be attracted only if the tax is otherwise deductible under Chapter XVII-B.

Which sum or income is liable for a higher rate of TDS?

This provision shall apply in respect of every sum or income or amount from which tax is deductible under any provision of Chapter XVII-B except those specified under Section 206AB, namely:

- (a) Section 192: TDS on Salary;
- (b) Section 192A: TDS on withdrawal from EPF;
- (c) Section 194B: TDS on winning from lotteries, crossword puzzles, etc.
- (d) Section 194BB: TDS on winning from racehorses;
- (e) Section 194LBC: TDS on income in respect of investment in Securitization Trust;
- (f) Section 194N: TDS on cash withdrawal.

All other payments shall be subject to the test of Section 206AB even if they are not considered as income in the hands of the assessee. However, this provision shall not apply to such sum (or income or amount) paid (or payable or credited) to a non-

resident who does not have a permanent establishment (PE) in India. PE includes a fixed place of business through which the business of the enterprise is carried on, whether wholly or partly.

Who is a specified person?

This provision applies to a specified person only. Section 206AB(3) provides the following conditions to classify a recipient as 'specified person':

- (a) He has not filed the return of income for 2 assessment years relevant to the previous years immediately prior to the previous year in which tax is required to be deducted;
- (b) The due date to file such return of income, as prescribed under Section 139(1), has expired; and
- (c) The aggregate amount of tax deducted and collected at source is Rs. 50,000 or more in each of these 2 previous years.

This provision is applicable from 01-07-2021 and any payment after this date shall be subject to the test of Section 206AB. For any payment on or after the said date but before 31-03-2022, a deductor will be under an obligation to check the return filing status of the recipient of the last two assessment years 2020-21 and 2019-20 (previous years 2019-20 and 2018-19).

No exception even if the recipient is 'not liable' to file the return

One of the conditions to invoke this provision is non-filing of return of income by the recipient. The provision does not carve out an exception in favour of the recipient who was otherwise not liable to file the return. This section provides for deduction of tax at higher rates if the deductee has not furnished the return of income of the specified period, irrespective of the fact that whether he was required to furnish it or not. This may invite troubles for the non-residents who are having a PE in India but otherwise not liable to file the return of income in view of the exemption extended by Section 115A(5). The super senior citizens will also face the heat if the tax was deducted from their income yet they did not file the return of income.

Example, Mr A (80+ Years) earned interest income of Rs. 5,00,000 in both the preceding years. TDS of Rs. 50,000 has been deducted under Section 194A in each year. As his income was below the maximum exemption limit, he was neither liable nor he furnished the return of income of the relevant period. In the current year, the tax now will be deducted at the higher rates prescribed under Section 206AB.

Example 2, Mr X going abroad for higher studies for two years. He buys foreign currency for an amount equivalent to Rs. 20 lakhs each in the next two financial years. The authorized dealer shall collect a tax of Rs. 65,000 from such amount under Section 206C(1G)(a). As Mr X will not have any income, he will not file the return of income for both the previous years. When he returns to India after completion of his studies, his income (other than the excluded one) shall be subject to TDS at a higher rate due to operation of Section 206CCA at least for one year.

Section 206CCA is similar to Section 206AB. This provision has been discussed subsequently.

What will be the rate of TDS?

Section 206AB provides that where tax is required to be deducted under this

provision, the tax shall be deducted at the higher of the following rates:

- (a) Twice the rate specified in the relevant provision of the Act;
- (b) Twice the rate or rates in force; or
- (c) 5%.

However, where both the provision of this section and Section 206AA are applicable, *that is*, the deductee has neither furnished his PAN to the deductor nor has he furnished his return of income for the specified periods, the tax shall be deducted at the rates provided in this section or in section 206AA, whichever is *higher*.

Section 206AA v. Section 206AB

Basis of distinction	Section 206AA	Section 206AB
<i>Applicability</i>	When a deductee fails to furnish his PAN	When a deductee fails to furnish a return for the specified period and the aggregate amount of tax deducted or collected during such specified period exceeds the specified limit
<i>Rate for deduction</i>	Higher of: <ul style="list-style-type: none"> ■ Rate specified in the relevant provision; ■ Rate or rates in force; or ■ 20%. 	Higher of: <ul style="list-style-type: none"> ■ Twice the rate specified in the relevant provision; ■ Twice the rate or rates in force; ■ 5%.
<i>Exception</i>	In respect of the following income received by a non-resident (or a foreign company): <ul style="list-style-type: none"> (a) Interest on bonds referred under Section 194LC; (b) Specified payments as referred under Rule 37BC; and (c) Income in respect of investment in Category I or Category II AIFs as referred under Rule 114AAB. 	In respect of sum/income on which tax is required to be deducted under any of the following provision: <ul style="list-style-type: none"> (a) Section 192 (b) Section 192A (c) Section 194B (d) Section 194BB (e) Section 194LBC (f) Section 194N <p>Further, this provision does not apply if the non-resident is not having any PE in India</p>
<i>Special tax rates</i>	5% tax rate to apply if the tax is deductible under Section 194-O and Section 194Q. If tax is deductible under Section 192A, the rate of TDS shall be the maximum marginal rate.	-

Which years are relevant for FY 2021-22 based on the definition of “Specified person”?

Reading of the definition of “Specified person” in Section 206AB gives an impression that the relevant Previous Years (‘PYs’) to be considered for this purpose are those years which are immediately preceding the subject Previous Year (‘PY’) **for which** the due date of filing income-tax return under Section 139(1) has expired.

Based on the above, as of 1 July 2021, the time limit for filing Income-tax return under section 139(1) is expired for FY 2018-19 and FY 2019-20 in case of all the types of taxpayers and as such the due date for FY 2020-21 is not expired. Therefore, these two PYs *i.e.* FY 2018-19 and FY 2019-20 are relevant PYs for checking the applicability of Section 206AB as of 1 July 2021.

However, once the time limit for filing the Income-tax return expires for Financial Year (FY) 2020-21, the relevant PYs would be FY 2019-20 and FY 2020-21.

What are the possible ways the Tax deductors can ensure compliance of this Section from 1 July 2021?

Given that the Section is applicable from 1 July 2021, before the said date, it is pertinent that the Tax deductors make sufficient arrangements to ensure the compliance of this Section. Tax deductors can reach out to their respective Deductees in this regard to obtain appropriate declaration on compliance of filing of the Income-tax returns for applicable PYs. Such a declaration can be obtained manually from the Deductees or through online forms or by way of survey through survey Apps etc. It also needs to be noted that the confidentiality of the data obtained from the Tax deductees is appropriately maintained in whichever mode the data is obtained. Further, given the sensitivity of the information involved, the Tax deductees may not be willing to share the tax return acknowledgements etc. for this purpose.

Furthermore, the Tax deductors can obtain sufficient indemnities while taking the declaration from the Tax deductees in order to cover the risks of non-compliance involved in this regard.

Format of Self Declaration u/s 206AB of The Income Tax Act, 1961 regarding deduction of TDS

To,

Name and Address of the Deductor (Payer)

Dear Sir,

Subject: Self Declaration u/s 206AB of The Income Tax Act, 1961 regarding deduction of TDS

With reference to the above subject matter, we (Name of Supplier/Deductee/ Payee) here by confirm that; we have filed Income Tax Returns for below mentioned immediately preceding Financial Years relevant to the year of declaration.

F.Y.	Whether amount of TDS is more than 50,000	Due Date of Filing of ITR	Actual Date of Filing of ITR	ITR –V Ack No.
2019-20	Yes / No			

2018-19	Yes / No			
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We have read and understood the provisions of Section 206AB of the Act and related applicable rules , notifications , circulars . Further, above mentioned [PAN](#) and IT returns details are correct.

We authorize (Name of Deductor) to recover the differential tax at higher rates along with applicable interest and penalties in case above mentioned information is proved to be incorrect.

With submitting this declaration, it is kindly requested to consider us to be compliant with the requirements of the Sec.206AB of the Act.

Yours Truly,

Name of Supplier/ Vendor

Date:

Place:

It is anticipated that; CBDT will shortly make available facility to verify ITR filing status of the deductee in order to make this smoothly workable. Presently, such facility is available to banks/ post offices to comply with Provision of Sec.194N.

SECTION 206CCA

A similar Section 206CCA has been proposed to be inserted to require the collector to collect the tax at a higher rate if the return is not filed by the collectee for the specified period. Thus, where tax is required to be collected under this provision on any sum (or amount), the tax shall be collected at the higher of following rates:

- (a) Twice the rate specified in the relevant provision of the Act; or
- (b) 5%.

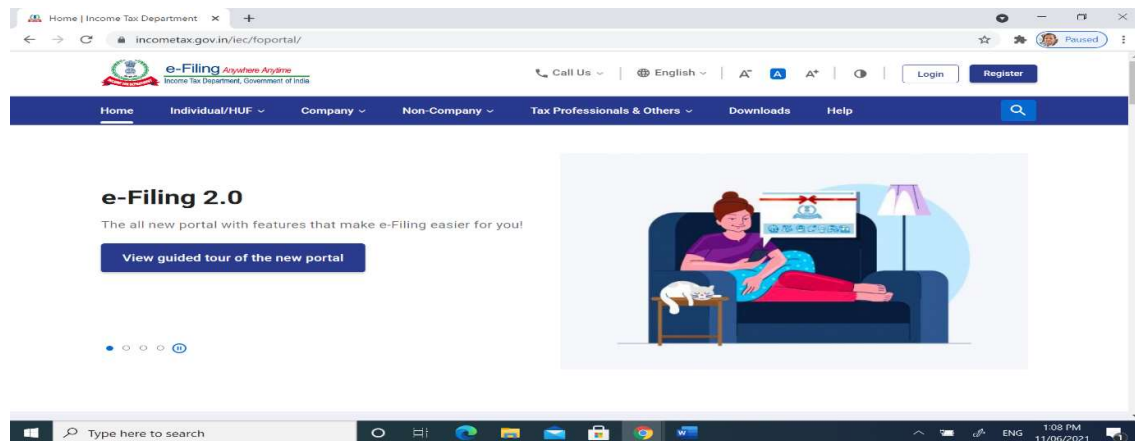
However, where both the provision of this section and Section 206CC are applicable, the tax shall be collected at rates provided in this section or in section 206CC, whichever is *higher*.

Section 206CC v. Section 206CCA

<i>Basis of distinction</i>	<i>Section 206CC</i>	<i>Section 206CCA</i>
<i>Applicability</i>	When collectee fails to furnish his PAN	When collectee fails to furnish the return of income for the specified period and the aggregate amount of tax deducted or collected during such specified period exceeds the specified limit
<i>Rate for deduction</i>	Higher of: <ul style="list-style-type: none"> ■ Twice the rate specified in Section 206C; ■ 5%. 	Higher of: <ul style="list-style-type: none"> ■ Twice the rate specified in section 206C ■ 5%
<i>Exception</i>	If the non-resident does not have a PE in India	If the non-resident does not have a PE in India
<i>Special tax</i>	The tax shall be	-

rates	collected at the rate of 1% if tax is collectable under Section 206C(1H).	
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PART 2: CHANGES IN NEW E FILING PORTAL OF INCOME TAX DEPARTMENT



The Income Tax Department has launched its new e-filing portal www.incometax.gov.in at 8:45 pm on 7th June, 2021. The new e-filing portal is aimed at providing taxpayer convenience and a modern, seamless experience to taxpayers. Some of the highlights of the new portal are detailed hereunder:

- New taxpayer friendly portal integrated with immediate processing of Income Tax Returns (ITRs) to issue quick refunds to taxpayers;
- All interactions and uploads or pending actions will be displayed on a single dashboard for follow-up action by taxpayer;
- Free of cost ITR preparation software available with interactive questions to help taxpayers for ITRs 1, 4 (online and offline) and ITR 2 (offline) to begin with; Facility for preparation of ITRs 3, 5, 6, 7 will be made available shortly;
- Taxpayers will be able to proactively update their profile to provide certain details of income including salary, house property, business/profession which will be used in pre-filing their ITR. Detailed enablement of pre-filing with salary income, interest, dividend and capital gains will be available after TDS and SFT statements are uploaded (due date is June 30th, 2021);
- New call center for taxpayer assistance for prompt response to taxpayer queries. Detailed FAQs, User Manuals, Videos and chatbot/live agent also provided;
- Functionalities for filing Income Tax Forms, Add tax professionals, Submit responses to Notices in Faceless Scrutiny or Appeals would be available.

It has also been clarified that the new tax payment system will be launched on June 18th, 2021 after the advance tax instalment date to avoid any taxpayer

inconvenience. The mobile app will also be released subsequent to the initial launch of the portal, to enable taxpayers to get familiar with the various features.

Representation to FM on Remedial Measures for Glitches in the New E-Filing Portal

June 18, 2021

The Honourable Finance Minister

Ministry of Finance

New Delhi

Subject: Representation on Issues/Glitches in the New Income Tax Portal & Suggestive Remedial Measures.

Reference: Tweet dated 16.6.2021

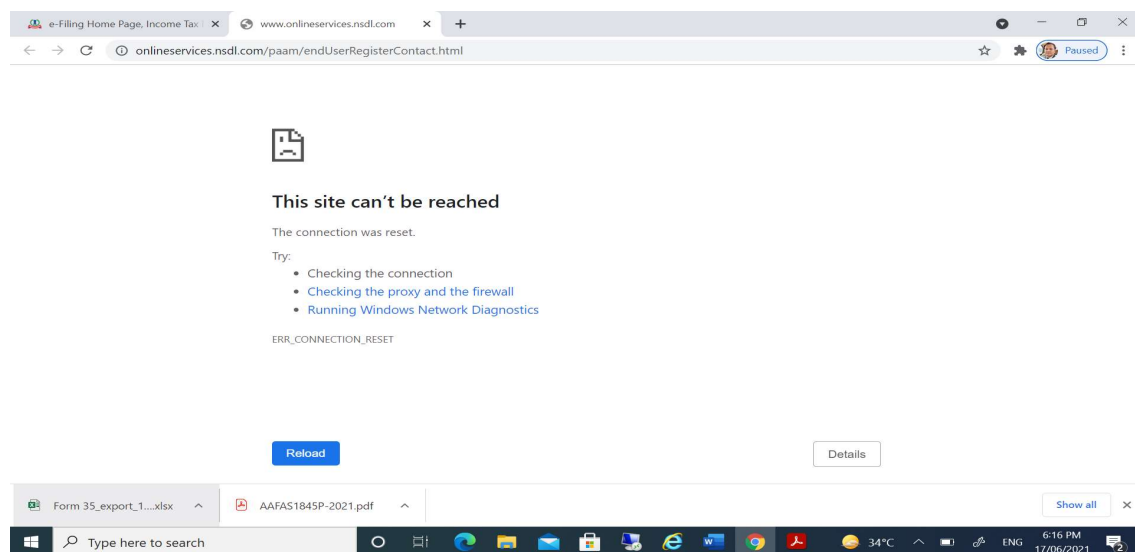
Dear Ma'am,

With reference to the captioned subject matter, at the outset we convey our sincere gratitude and thanks to You, for taking due cognizance of the genuine difficulties and hardships of the taxpayers and their authorised representatives, arising out of certain issues and technical glitches in the new Income Tax Portal, and thereby giving us an opportunity to make this written representation to address this critical issue.

Accordingly, in this representation, we are making an honest and sincere attempt to practically demonstrate the technical glitches and currently non-functioning functionalities of the new e-Filing portal, so as to warrant an immediate and much needed attention of the concerned competent authorities to make the e-Filing experience, faster, smoother and better in real sense.

Practical Demonstration of the Improvements Needed in New e-Filing Portal

1. Slow Processing Speed:



The screenshot shows a web browser window with the following details:

- Address bar: `onlineservices.nsd.com/paam/endUserRegisterContact.html`
- Page title: `Form 35_export_1...xlsx` and `AAFAS1845P-2021.pdf`
- Search bar: `Type here to search`
- System tray: `34°C`, `ENG`, `6:16 PM`, `17/06/2021`

The error message on the page reads:

This site can't be reached
The connection was reset.
Try:
• Checking the connection
• Checking the proxy and the firewall
• Running Windows Network Diagnostics
ERR_CONNECTION_RESET

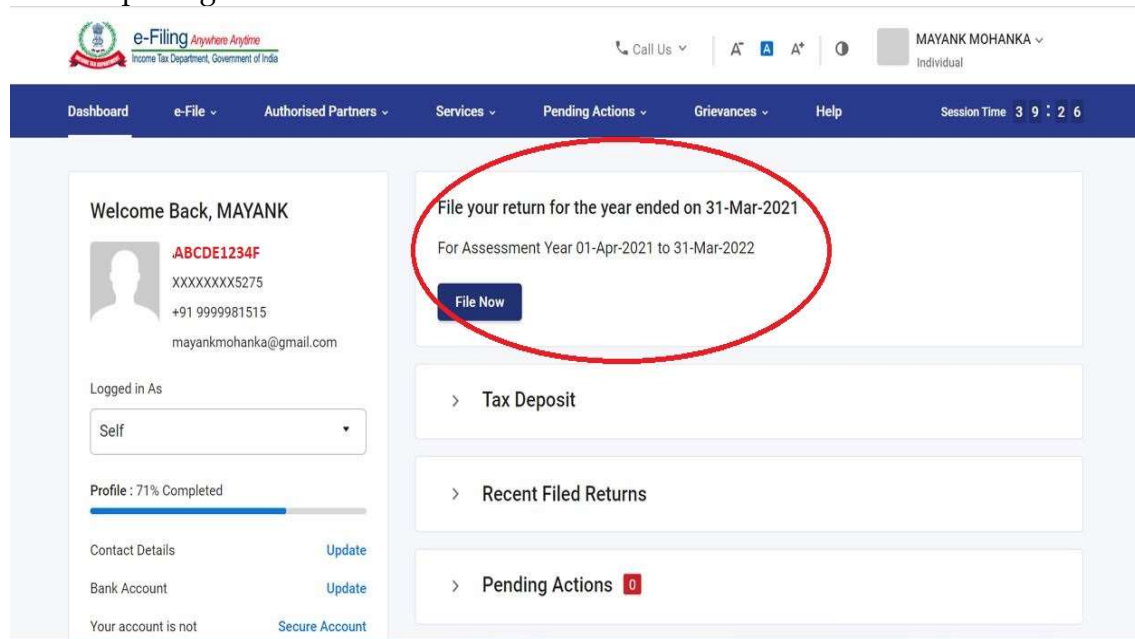
The most significant benefit or advantage of this new e-Filing portal has been proclaimed as its ability to process the ITRs as soon as these are filed by the taxpayers and thereby reducing the existing processing time period of 63 days by CPC to 0.

On first day, infact night (8:45 p.m.) of the launch of the new portal, it was not possible to even login to one's registered e-filing account. Though the login speed has improved in these 10 days of its launch, still a slight increase in traffic on site, makes the portal very slow with buffering and loading going on for few minutes even.

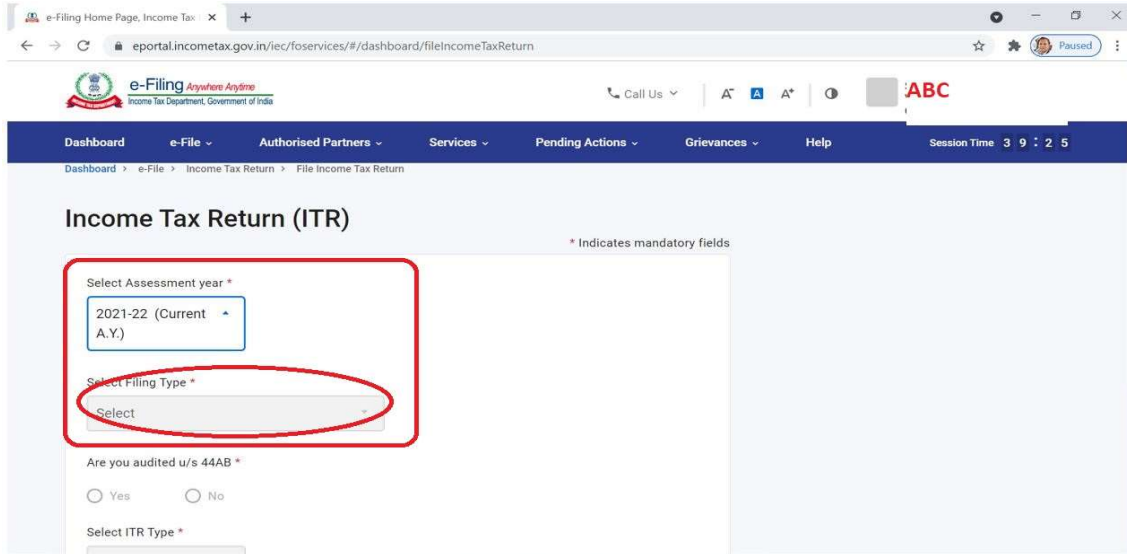
So, this slow processing speed of the new e-Filing portal is definitely a cause of concern. Currently the site is slow even when the peak return-filing season has not arrived and as such to cope up with the tremendously increased traffic during the peak filing season and more importantly to live upto its desired expectations of immediate processing of ITRs, it is quintessential to increase the speed and processing capabilities of the new e-Filing portal.

2. Inactive e-Filing Tab for Filing ITRs for AY 2021-22

The due dates of filing ITRs for the AY 2021-22 (FY 2020-21) in non-auditable cases has been extended from 31.7.2021 to 30.9.2021 and in auditable cases (other than transfer pricing) has been extended from 31.10.2021 to 30.11.2021 and in auditable transfer pricing cases has been extended from 30.11.2021 to 31.12.2021.



However, currently the tab for filing ITR for the current AY 2021-22 is inactive and as such return filing for the AY 2021-22 is not possible presently.

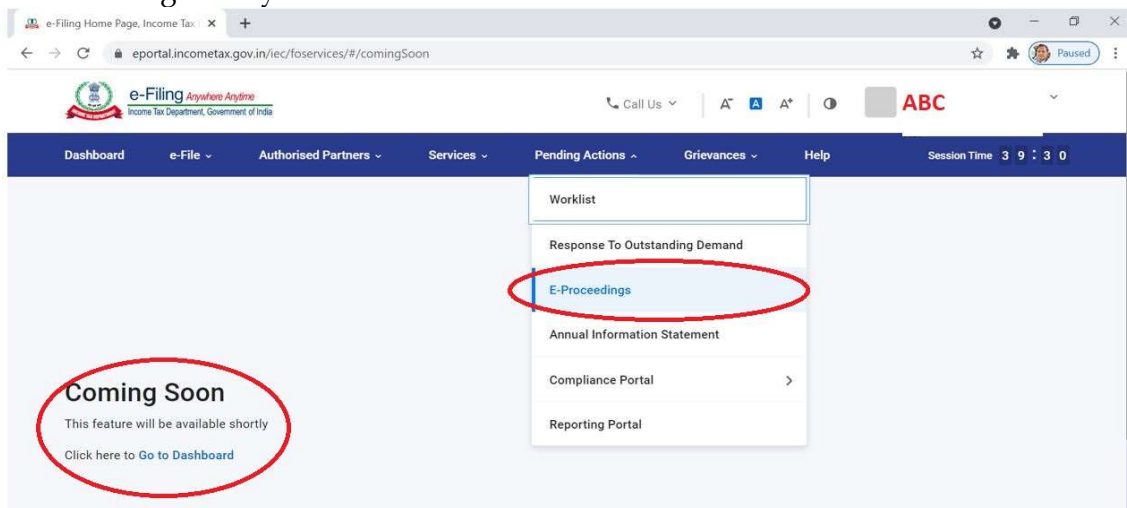


As soon as AY 2021-22 is selected by the user, the next mandatory tab “Select Filing Tab”, becomes inactive, thereby making it impossible to proceed any further.

It needs to be appreciated that the ITR filing work for AY 2021-22 will gain momentum after 30.6.2021, once the TDS Returns for Q4 of FY 2020-21 are being filed and corresponding TDS credit is being reflected in Form 26AS of the taxpayers. Thus, there is an immediate and urgent need to make the ITR filing tab for AY 2021-22 also functional and operational.

3. Non-Availability of e-Proceedings Utility

The newest and the brightest feather in the digital cap of the Income Tax Department i.e. the e-Proceedings utility was operating very seamlessly and smoothly in the previous e-Filing portal. The first season of the full-fledged faceless assessments for the AY 2018-19 has been successfully carried out on the previous e-Filing portal on the e-Proceedings utility.



However, inspite of the elapse of 10 days since its launch, the e-Proceedings utility has not been made functional in the new e-Filing portal yet. So, in the absence of the e-Proceedings utility, the taxpayers are not able to see and access any of their

assessment, appeal and penalty proceedings notices and replies (faceless or otherwise).

It needs to be appreciated that though the time barring completion period for regular assessments u/s 143(3A)/144B for the AY 2018-19 has been extended till 30.6.2021, still the majority of these assessments have been concluded now or are in the final stages of conclusion. In many cases, the taxpayers have received scrutiny notices u/s 142(1) or show cause notices in cases of ongoing assessments or show cause notices for levy of penalty u/s 270A of the Incometax Act in cases of concluded assessments, on or before 31.5.2021, in the previous portal.

However, due to the unavailability of the e-Proceedings utility in the new portal, the assesseees are not in a position to file their corresponding replies to such notices. Therefore, the e-Proceedings utility must be made functional in a timely manner, so as to enable the assesseees to file their replies to the notices in a comfortable and appropriate manner and this black-out period starting from 31.5.2021 and continuing till date should be excluded from the time barring completion deadline of 30.6.2021.

Also, the user manual of the new e-Proceedings utility shows that the maximum uploadable file size has now been reduced to 5MB in place of the earlier size of 10MB, which will create a lot of ground-level problems for the assesseees to upload their supporting attachments and records along with their replies.

It needs to be appreciated that this new e-Filing portal was expected to be equipped with increased storing and processing capabilities and so instead of increasing the size of the up-loadable file, this decrease is certainly not warranted and called for.

4. Non-Integration of Valid DINs: The new e-Filing Portal in its present avatar is not capable of importing the Document Identification Numbers (DINs) of the orders, intimations, notices or any other communications.

One such instance is the consistent 'DIN Error' being displayed in the Form 35 e-filing tab of the new portal.

The screenshot shows the e-Filing portal interface for the 'Appeal to Commissioner (Appeals)' form (Form No. 35). The form title is circled in red. The form includes the following fields and information:

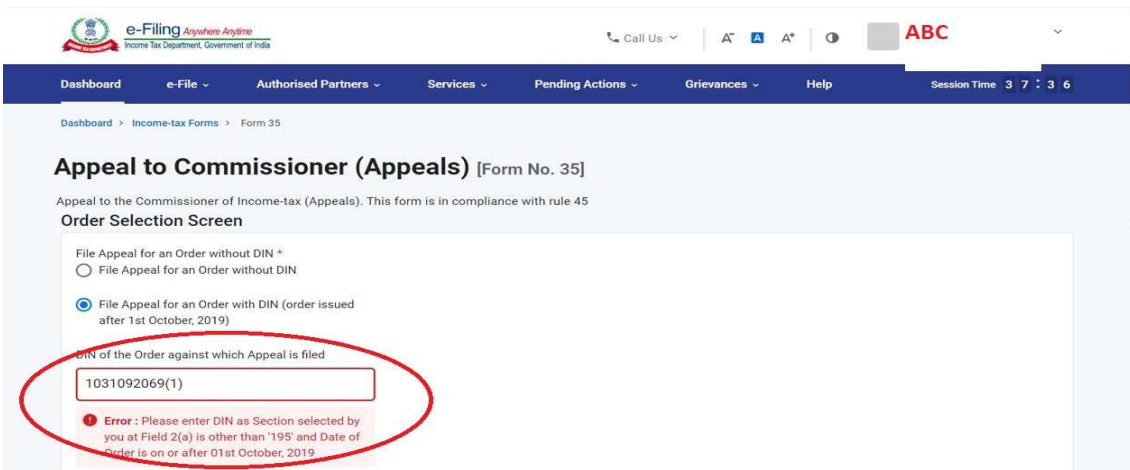
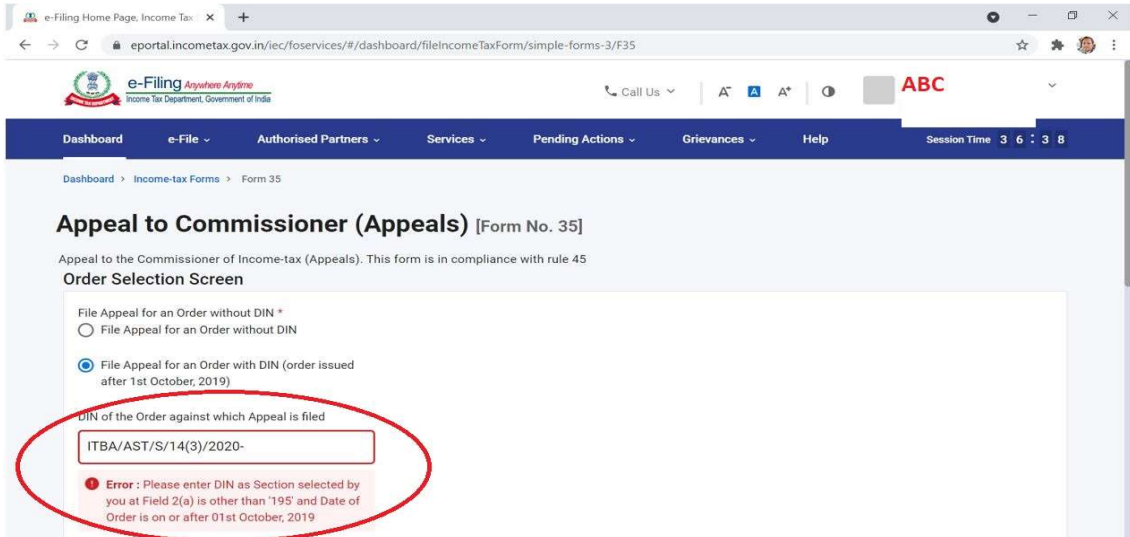
- PAN: ABCDE1234F
- Submission Mode: Online
- Filing Type: Original
- Assessment Year (A.Y.): 2018-19

A 'Continue' button is visible at the bottom right of the form. A 'Relevant Section and Rule' box on the right side of the form lists:

- Section 249 - Form of appeal and limitation
- Rule 45 - Application for recognition

15. DIN	ITBA/AST/S/143(3)/2020-21/1031092069(1)
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ASSESSMENT ORDER



The above Real-time windows of the new e-Filing Portal for filing Appeal Form 35 clearly show that even a valid DIN is not getting accepted by the e-Filing tab and thereby making it impossible for the assessee to proceed with filing their appeal Form 35 in respect of their assessment/re-assessment/penalty orders.

5. Non-Availability of Previous Years ITR Forms, ITR Acknowledgements and All Other Online Forms

The e-Filed Returns are available for download /view starting Assessment Year 2013-14.

8 filings till date

A.Y. 2020-21

Filing Type Original	E-Verified Dec 29, 2020	ITR : ITR-3 Acknowledgement No : 1234567890 Filed By : SELF Filing Date : Dec 29, 2020 Filing Section : 139(1)	View Details Download Form Download Receipt Download JSON
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Download Forms will be available shortly!

Appeal to the Commissioner of Income-tax (Appeals)

Form 35

2 filings till date

A.Y.2015-16

Filing Date 15-Jan-2018	Filing Type Original Status : Form verified Acknowledgement No : 364705501150118 Filed By : SELF	View Details Download Form Download Receipt Download Attachments
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Download Forms will available enabled shortly!

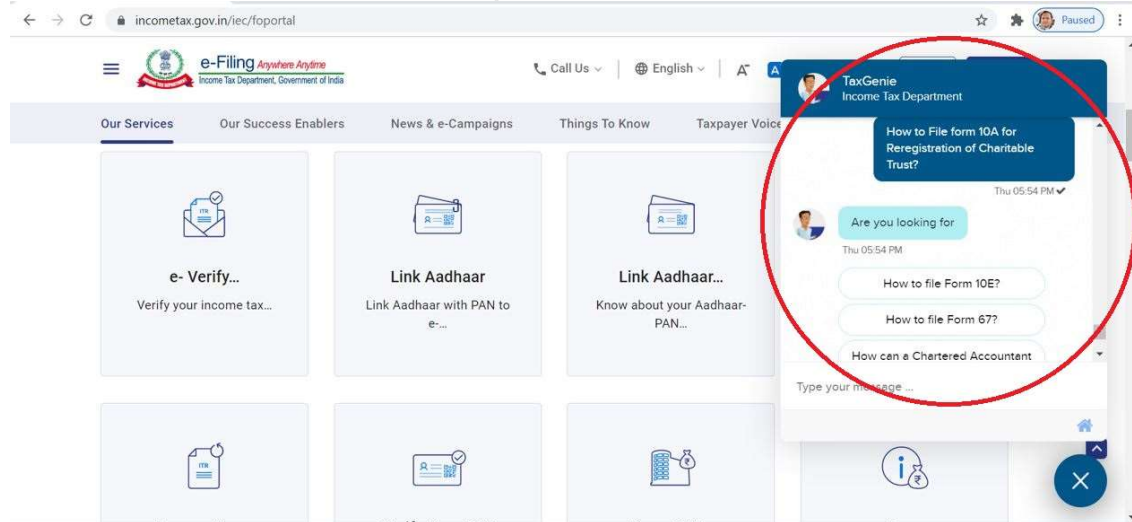
Error

Failed to load PDF document.

Reload

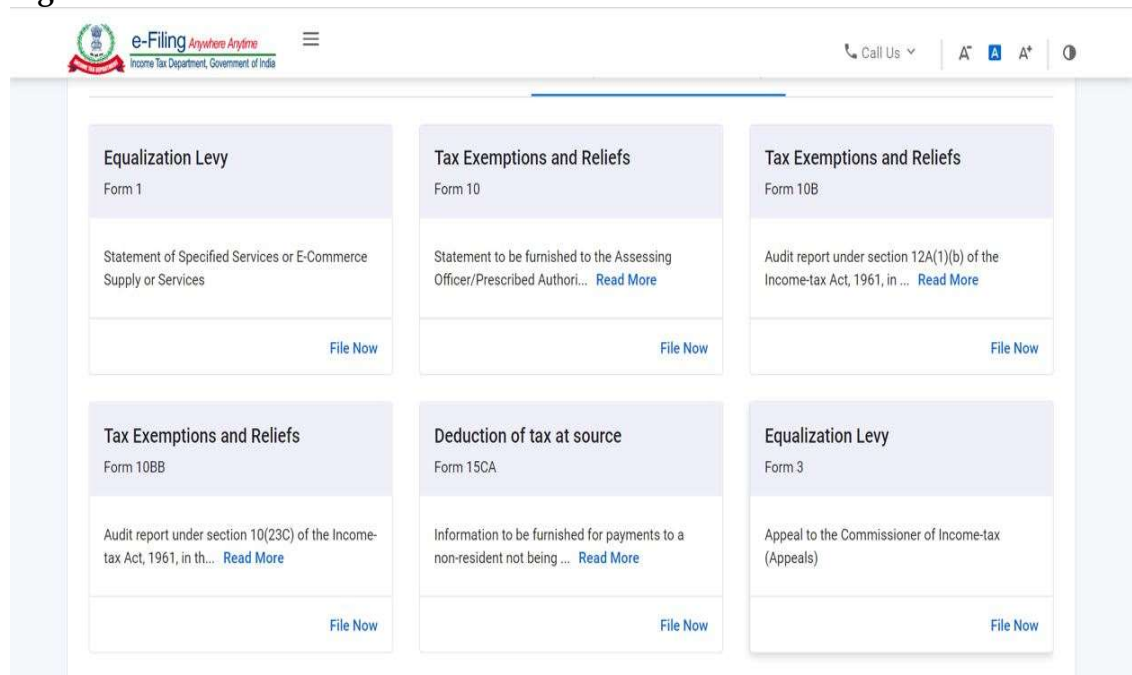
The previous years' ITR Forms and all other electronic Forms are currently not available for download. The ITR V Acknowledgements are being shown as downloadable but these don't get downloaded on clicking the download link. So, currently the taxpayer is not having any access, whatsoever, to any of his/her previously filed ITRs, Appeals or any other Forms.

6. Non-effective Tax Genie Autobot/Chatbox



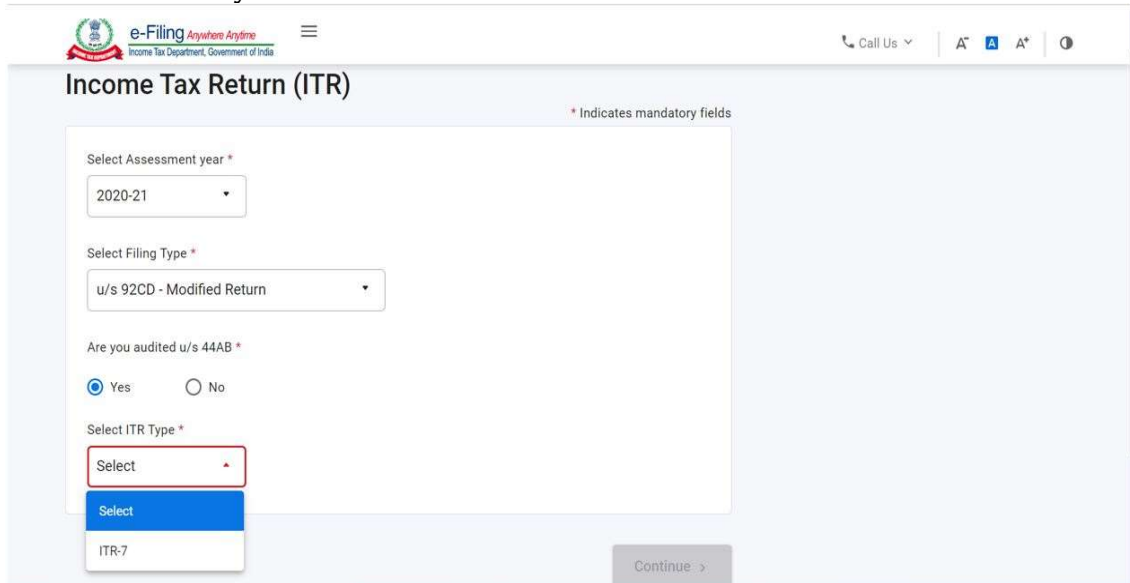
The widely publicised interactive autobot TaxGenie chatbox feature of the new e-Filing portal bombards the users with prefilled questions and answers, many of which may not be even relevant to the specific query of the user. This feature is not actually an AI enabled feature but just a better presentation of the erstwhile Help sections of the previous e-Filing portal.

7. Non Availability of Online Forms 10A & 10AB for Filing Application for Re-registration of Charitable Trusts and similar Institutions



In the new e-Filing Portal, currently Forms 10A and 10AB for filing Applications for Re-Registration of Charitable Trusts and other similar institutions are not available inspite of the fact that the due date for filing such applications is 30.6.2021.

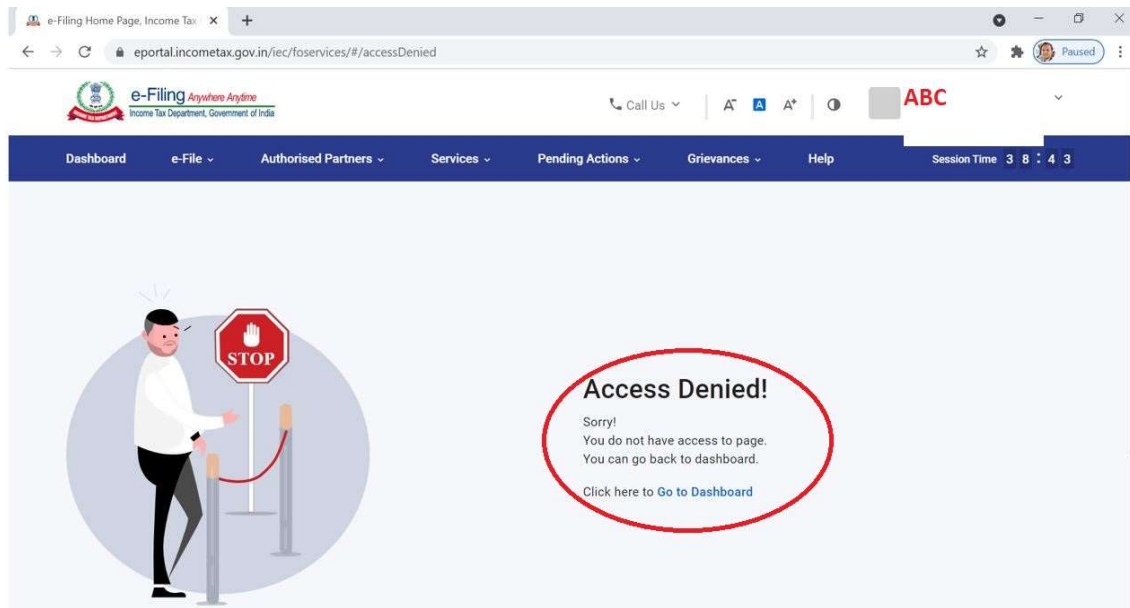
8. Non Possibility of Revision of ITR & Other Online Forms



The screenshot shows the 'Income Tax Return (ITR)' form on the e-Filing portal. The form includes the following fields:

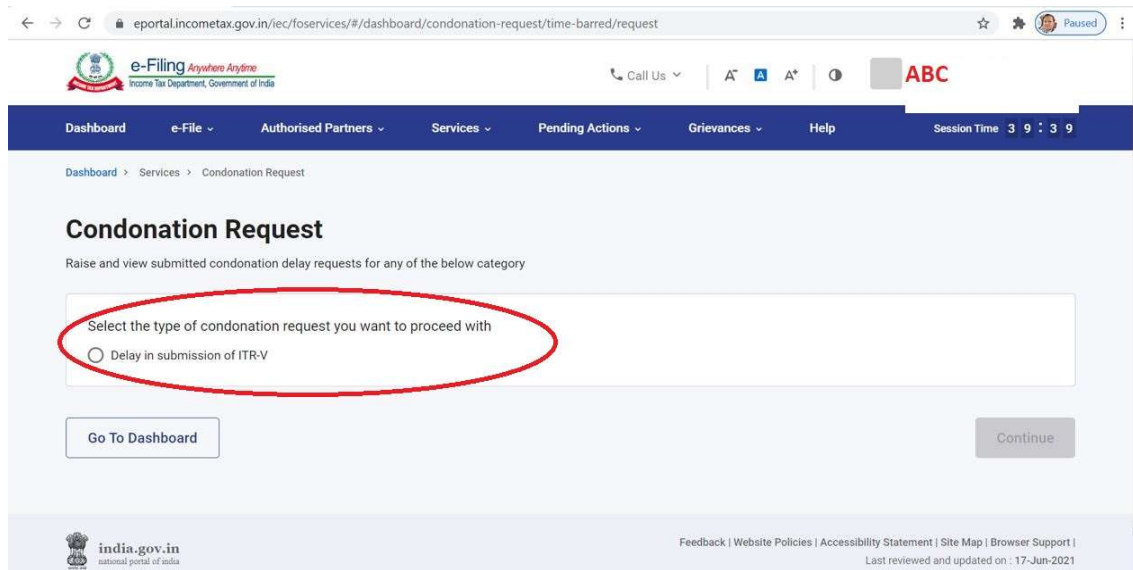
- Select Assessment year *: 2020-21
- Select Filing Type *: u/s 92CD - Modified Return
- Are you audited u/s 44AB *: Yes No
- Select ITR Type *: Select (dropdown menu with 'ITR-7' option visible)

A 'Continue >' button is located at the bottom right of the form.



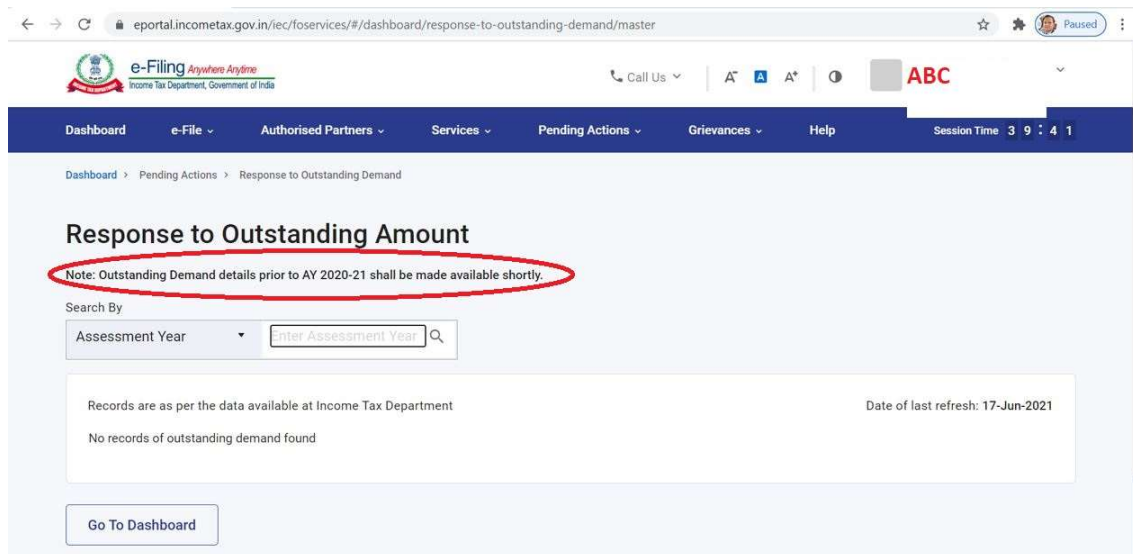
In the new e-Filing portal, currently it is not possible to revise any of the previously filed ITR or any other online Form, as the 'access denied' message makes it impossible for the assessee to revise his/her ITR or any other form.

9. Condonation Request only for ITR V



Currently, only one type of Condonation Request has been enabled in the new e-Filing portal and that is Condonation for Delay in Submission of ITR-V. No other condonation request is possible.

10. Non Availability of Outstanding Demand Details prior to AY 2020-21



Currently, the details of outstanding income tax demand prior to AY 2020-21 are not getting reflected in the new e-Filing portal and as such making it impossible for the assessee to file responses to their outstanding demands, and thereby giving a leeway for adjustment of their refunds against such demands u/s 245 of the Act.

Concluding Remarks:

The above practical demonstration with the help of real-time templates of the new e-Filing portal makes it duly evident that in spite of the much hype and hoopla concerning this new e-Filing portal, in reality, practically an assessee can't file ITR for AY 2021-22, can't file appeal, can't file rectification or revision, can't access or see previous years ITR Forms and other online Forms, and doesn't have any access

to any of the assessment, appeal and penalty proceedings, in the current version and avatar of this new e-Filing portal.

Ironically, this new e-filing portal in its current avatar, instead of facilitating the widely proclaimed progression to digitalisation is infact currently working in its reverse gear and is forcing reverting to manual filing, to avert non-compliance of specified deadlines, one such case in point being the relaxation given by the CBDT in e-filing of forms 15CA and 15CB for foreign remittances, in manual format to the authorised dealers till 30.6.2021.

Thus, the competent income tax authorities and the vendor Infosys are requested to take immediate consideration and cognizance of the above practically demonstrated technical glitches and non functioning functionalities to make the incometax e-filing experience faster, smoother and better in real and effective manner.

Thanking You and assuring You of our best professional support and contribution in Nation building at all times.

For M/s S M Mohanka & Associates
Chartered Accountants

--sd--

Mayank Mohanka, FCA
Partner

PART 3 CHANGES IN TAX AUDIT REPORT

A. Increase in threshold limit for Tax Audit u/s 44AB

As per the provisions of section 44AB an assessee shall get the books of accounts audited if its gross turnover or receipts exceeds specified threshold limit prescribed in this behalf. To reduce compliance burden on small and medium enterprises, Section 44AB was amended by the Finance Act, 2020, to increase the threshold limit, for a person carrying on business, from Rs. 1 crore to Rs. 5 crores, if the following conditions are satisfied:

- (a) Cash receipts, including amount received for sales, turnover or gross receipts, does not exceeds 5% of the aggregate amount received during the previous year; and
- (b) Cash payments, including amount incurred for expenditure, does not exceed 5% of the aggregate amount paid during the previous year.

The ceiling limit of Rs. 5 crores has been further increased by the Finance Act, 2021 to Rs. 10 crores with effect from the assessment year 2021-22.

B. Ready Referencer on Tax Audit Applicability for Persons Carrying on Business or Profession

B.1. In case of person engaged in business and opting for presumptive taxation under section 44AD:

Turnover limit for the previous year	Amount of profit with respect to turnover (in %)	Whether cash receipts less than 5% of the Turnover	Whether cash payment less than 5% of the total payment	Is Tax audit Applicable?
More than 10 Crores	Not applicable	Not applicable	Not applicable	Yes
More than 2 crore but upto 10 Crore	Not applicable	Yes	Yes	No
More than 2 crore but upto 10 Crore	Not applicable	No	No	Yes
More than 1 crore but upto 2 Crore	More than 8% or 6% of Turnover	Not applicable	Not applicable	No
More than 1 crore but upto 2 Crore	Less than 8% or 6% of Turnover	Not applicable	Not applicable	Yes
Less than 1 Crore	More than 8% or 6% of Turnover	Not applicable	Not applicable	No
Less than 1 Crore	Less than 8% or 6% of	Not applicable	Not applicable	Yes

	Turnover			
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B.2. In case of person engaged in profession and opting for presumptive taxation under section 44ADA:

Turnover limit for the previous year	Amount of profit with respect to turnover (in %)	Is Tax Audit Applicable?
More than 50 Lakhs	Not applicable	Yes 44AB(b)
Upto 50 Lakhs	More than 50%	No
Upto 50 Lakhs	less than 50% (sec 44ADA)	Yes 44AB(d)

*If total income exceeds basic exemption limit only then tax audit is applicable.

C. Key Changes in Tax Audit Report for AY 2021-22

CBDT has amended Tax Audit Report in Form 3CD by inserting/omitting clause(s) in the Income-tax Rules, 1962 by **Income Tax (Eighth Amendment) Rules, 2021 vide Notification No. 28/2021 dated 01.04.2021**. These rules, effective from 01.04.21, have brought in **total 6 (six) changes** to Tax Audit Report in Form 3CD, which have been explained below:

1. Insertion of a New Sub Rule (3) in Rule 6G of the Income Tax Rules 1962, permitting Revision of Tax Audit report in form 3CD in certain cases

Rule 6G:

(1) The report of audit of the accounts of a person required to be furnished under section 44AB shall –

(a) In the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, be in Form No. 3CA;

(b) In the case of a person who carries on business or profession, but not being a person referred to in clause (a), be in Form No. 3CB.

(2) The particulars which are required to be furnished under section 44AB shall be in Form No. 3CD.

(3) The report of audit furnished under this rule may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such

accountant, and furnish it before the end of the relevant assessment year for which the report pertains, if there is payment by such person after furnishing of report under sub-rule (1) and (2) which necessitates recalculation of disallowance under section 40 or section 43B.

Necessity of this Amendment:

The Finance Act 2020 had inserted just five more words viz. '**date one month prior to**' in clause (ii) of Explanation to Section 44AB of the Income Tax Act, 1961. But these five words had created some grave paradoxical inconsistencies in some of the important and significant reporting clauses in the Tax Audit Report in Form 3CA/3CB with 3CD u/s 44AB and had literally put the cart before the horse.

(i) TDS Deposition Compliance (Disallowance u/s 40):

Clause 21(b)(i)(B) in Form 3CD requires the reporting by the Tax Auditor, on details of payments/expenditure, on which tax has been deducted but has not been paid on or before the due date specified in section 139(1) the Act.

This reporting clause has some very serious and dire consequences for the auditee in his/her assessment as the expenses reported under this clause are disallowed to the extent of 30% u/s 40(a) if TDS on such expenses has not been deposited by the auditee uptill the due date of filing of ITR, u/s 139(1).

Therefore, in the pre-amended Tax Audit Report era, it was really very harsh and unrealistic to expect the tax-auditor to report correctly on the TDS deposition compliance, on the due date of submission of tax audit report, which was one month prior to the prescribed due date of filing of ITR u/s 139(1), for allowability of such expenditure.

ii). Allowability of Expenditure on Payment Basis u/s 43B:

Clause 26(B) of Form 3CD requires reporting on allowability of certain expenditure on payment basis u/s **43B** of the Income Tax Act.

Under section 43B certain expenditure are allowed on payment basis if they are made on or before the date of filing of the ROI u/s 139(1).

Therefore, it was really very unrealistic to expect the tax-auditor to report correctly on the eligibility of such expenditure as an allowable expenditure, on the due date of submission of tax audit report, which was one month prior to the prescribed due date of allowability of such expenditure i.e. filing of ITR u/s 139(1).

Therefore, the amendment has now removed the inconsistency in the provisions of Sec. 43B and Tax Audit report in form 3CD, and accordingly it has been now allowed to revise the TAR in Form 3CD to claim the deduction of expenses under section 43B if the same had been disallowed in the original tax audit report.

2. Modification to Clause 8a to include exercise of option under section 115BAC/115BAD

Existing Clause 8a of Form 3CD requires reporting of exercise of an option by the assessee under section 115BA/115BAA/115BAB. The Finance Act, 2020 has introduced two new concessional tax rate regime under section 115BAC for Individuals and HUF and section 115BAD for cooperative societies. These two provisions have been made applicable from AY 2021-22. In order to incorporate the same in the Tax Audit Report, Clause 8a of Form 3CD has been modified to include these two sections - section 115BAC and section 115BAD also. For the said change to be effective, clause 8a has been amended.

Accordingly, in Appendix II, in Form 3CD-

(i) in PART -A for clause 8A, the following clause has been substituted, namely: -

"8A Whether the assessee has opted for taxation under section 115BA/115BAA/115BAB/115BAC/115BAD?"

3. Amendment in Clause 17 to Report Higher Safe Harbour Limit of 20% between actual sales consideration and stamp duty value under section 43CA and section 56(2)(x)

In order to boost demand in the real-estate sector and to enable the real-estate developers to liquidate their unsold inventory at a rate substantially lower than the circle rate and giving benefit to the home buyers, it is provided to increase the safe harbour from 10% to 20% under section 43CA for the period from 12th November 2020 to 30th June 2021 in respect of the only primary sale of residential units of value up to Rs. 2 crore. Consequential relief by increasing the safe harbour from 10% to 20% was also allowed to buyers of these residential units under section 56(2)(x) for the said period. Therefore, for these transactions, the circle rate shall be deemed as a sale/purchase consideration only if the variation between the agreement value and the circle rate is more than 20%.

Accordingly, in PART-B, for clause 17, the following clause shall be substituted, namely:

"17. Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C,

Details of property	Consideration received or accrued	Value adopted or assessed or assessable	Whether provisions of second proviso to subsection (1) of section 43CA or fourth proviso to clause (x) of subsection (2) of section 56 applicable? [Yes/No]

4. Changes in Clause 18 related to Adjustment in WDV of Assets Adjustment made to the written down value under section 115BAC/115BAD (for assessment year 2021-2022 only)

In case of assessee opting for section 115BAC/115BAD, additional depreciation is not allowed and hence requires adjustment in WDV of the block of assets. Hence Clause 18(ca) has been substituted with the new sub-clause which is applicable for AY 2021-22 only. Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession Finance Act, 2021 has amended the provisions of section 32 to deny depreciation on goodwill. It has been further provided that the block containing the goodwill as an asset shall be modified and depreciation on goodwill as appearing in that block at the WDV as of 1.4.2020 shall not be claimed from AY 2021-22 and such value of goodwill will be excluded from the block. The block needs to be modified to that extent.

Accordingly, in clause 18, for sub-clauses (ca) and (cb), the following sub-clauses, have been substituted namely:-

“(ca) Adjustment made to the written down value under section 115BAC/115BAD (for assessment year 2021-2022 only)... ..”

(cb) Adjustment made to written down value of Intangible asset due to excluding value of goodwill of a business or profession

(cc) Adjusted written down value... ..”;

5. Changes in Clause 32 to Report Adjustment in Brought Forward of Losses if option u/s 115BAC/115BAD is exercised

The new tax regime under section 115BAA, section 115BAC and section 115BAD do not allow certain deductions and if the option under these provisions is exercised, then the brought forward losses need to be modified to the extent they are related to such restricted disallowed deductions. The modification has to be separately reported in Point 6 of Clause 32.

Accordingly, in clause 32, for sub-clause (a), the following sub-clause had been substituted, namely:-

(a) Details of brought forward loss or depreciation allowance, in the following manner, to the extent available:

Serial Number	Assessment Year	Nature of loss/allowance (in rupees)	Amount as returned* (in rupees)	All losses/allowances not allowed under section 115BAA/115BAC/115BAD	Amount as adjusted by withdrawal of additional depreciation	Amounts as assessed (give reference to relevant)	Remarks

					tion on account of opting for taxation under section 11 5BAC/11 5BAD^	order)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

***If the assessed depreciation is less and no appeal pending then take assessed.**

^To be filled in for assessment year 2021-2022 only.

6. Omission of Clause 36 (DDT)

As from the A.Y. 2021-22, the dividend received by the assessee is taxable in its own hands and not in the hands of company distributing the dividend. Therefore, the Dividend Distribution Tax has been abolished resulting in omission of clause 36 in Form 3CD.