

INDIA BUDGET, 2009

Section 206AA and TDS Chart

July 16, 2009

Doing common things, *Uncommonly well.*

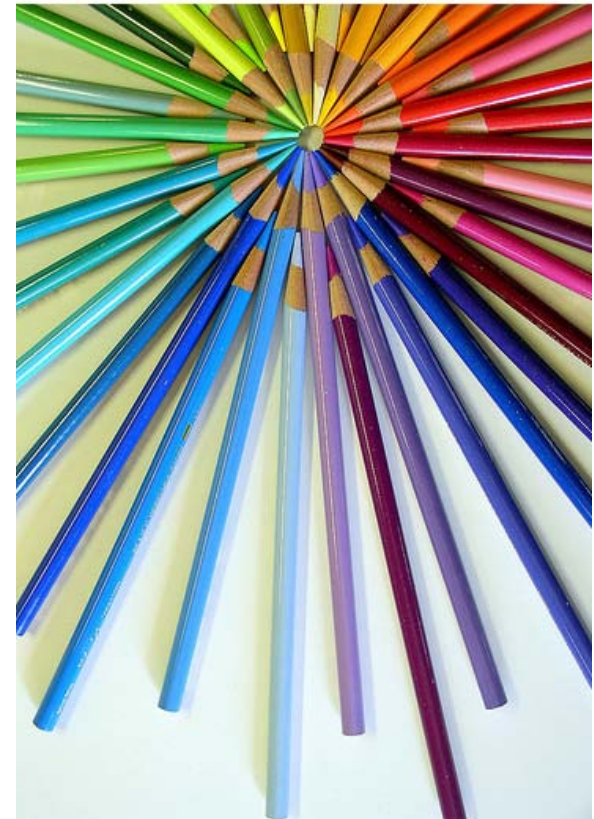
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A Finance & Accounts outsourcing company

In last few days, we have received many queries and inquiries related to:

- **Section 206AA** and
- **TDS rates** [Date of applicability of not deducting Surcharge (**SC**), Education Cess (**EC**) and Secondary & Higher Education Cess (**SHEC**) on TDS payments to any resident in India]

In the next few pages, we have tried to address those queries along with possible implications/hardship which may be caused on enactment of the above provisions



Section 206AA



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Intent behind this section

- Improving compliance with the provisions of quoting PAN through the TDS regime.
- Earlier the onus of collecting PAN of deductee was on the deductor and this system was not working. Now the onus has been shifted to **deductee**.

Key provisions of Section 206AA

- It is mandatory for the deductee (the person who is entitled to receive any sum or income or amount on which TDS is deductible) to furnish its Permanent Account Number (**PAN**) to the deductor.
- If deductee fails to provide its PAN, the deductor shall deduct the TDS at the higher of following rates:
 - at the rate specified in the Income Tax Act **OR**
 - at the rates in force i.e. the rate mentioned in the Finance Act **OR**
 - at the rate of **20%**
- No certificate under Section 197 (certificate for lower or nil tax deduction) shall be granted by the tax authorities unless the applications contains the PAN of the applicant.
- This Section also make it **mandatory to quote the PAN of deductee** in all the correspondence, bills and vouchers exchanged between deductor and deductee.



Coverage

- ❑ Not a single category of TDS transactions has been spared from the provisions of this Section .
- ❑ It shall also apply to all **payments made to non-residents** which requires deduction of tax. Generally, the payments which attract TDS are:
 - ❑ Royalty
 - ❑ Fee for technical services (FTS)
 - ❑ Interest
- ❑ It is an overriding section and supersedes the provisions of the Income Tax Act, 1961

Implications

- ❑ All the resident deductees (the person who is entitled to receive any sum or income or amount on which TDS is deductible) who do not have PAN or whose income is below the taxable limit, have to apply and obtain PAN if they want deduction of TDS at normal rates which are always lower than 20%.
- ❑ Non –residents have to apply for PAN to avail lower rate of withholding tax (TDS) if their agreements or contracts with residents in India specifies that withholding tax is to be borne by the non-residents.



...contd. (Section 206AA)



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- The overall cost of services/products for the resident assessee shall go up in all the cases where agreements or contracts with non-residents specifies that any withholding tax is to be borne by the resident assessee. They would be required to gross up the withholding tax @ 20% at the time of releasing the payment if PAN of non-resident is not available.

Effective date of applicability

- This provision has been proposed to be effective from *1st April' 2010* (**Financial Year 2010-11**).

BC's view

- As per our view, the applicability of this section on payments made to non-residents is likely to be withdrawn before the effective date i.e. 1st April'2010 for the reason mentioned in the next two bullet points.
- The main intent of legislature behind this section is to track all the transactions related to TDS/withholding tax. This objective, in case of non-residents payments, is already being achieved through the introduction of Rule 37BB (through [Notification no. 30/2009](#) dated 25th March'2009) and a [Circular No. 04/2009](#) dated 29th June'2009.
- This circular specifies the manner in which an undertaking in Form 15CA need to be uploaded by the deductor on the website (www.tin-nsdl.com) before making any payment to non-residents u/s 195 of the Income Tax Act, 1961. It is effective from 1st July'2009.



TDS chart



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Nature of Payments	01.04.2009 to Date of enactment of Finance Bill,2009	Date of enactment of Finance Bill,2009 to 30.09.2009	1.10.2009 to 31.3.2010
Section 194 C			
i. Individual contractor	2.266 %	2 %	1 %
ii Other than individual contractor	2.266 %	2%	2 %
iii Individual sub – contractor	1.133 %	1 %	1 %
iv Other than individual sub – contractor	1.133 %	1 %	2 %
v Individual contractor /sub-contractor for advertising	1.133 %	1 %	1 %
vi Other than individual contractor /sub-contractor for advertising	1.133 %	1 %	2 %
vii Contractor in transport business	2.266 %	2 %	Nil ¹
viii Sub-contractor in transport business	1.133 %	1 %	Nil ¹

Notes related to Section 194 C:

1. The Nil rate will be applicable if the transporter quotes its PAN otherwise the rate will 1% for an individual contractor and 2% for other than individual transporter.
2. The term 'Individual' wherever appearing above may please be read as ' Individual /HUF'

Nature of Payments	01.04.2009 to Date of enactment of Finance Bill,2009	Date of enactment of Finance Bill,2009 to 30.09.2009	1.10.2009 to 31.3.2010
Section 194 I			
i. Rent of plant, machinery or equipment	11.33 %	10 %	2 %
ii Rent of land, building or furniture to an Individual and HUF	16.99 %	15 %	10 %
iii Rent of land, building or furniture to a person other than an Individual and HUF	22.66%	20 %	10 %
Section 194 J			
i Payment for professional or technical services	11.33 %	10 %	10 %

General notes:

- The rate of TDS will be **20%** in all cases if PAN is not quoted by the deductee as per **Section 206AA** w.e.f. 01.04.2010 (Financial Year 2010-11).
- Only few important TDS sections has been discussed here as there is no change in other TDS rates related to payments being made to a resident deductee.
- For ease of calculation, comparison and presentation, we have included surcharge (SC), education cess (EC) and secondary & higher education cess (SHEC) in the TDS rates mentioned under the column titled as '01.04.09 to Date of enactment of Finance Bill, 2009'.
- EC & SHEC will continue to be applied in case of **TDS on Salary**, however no surcharge shall be applicable.
- However, while making payments to **non-residents**, surcharge and cess need to be applied as below:
 - Payment to a Company outside India : SC @ 2.5% + EC + SHEC (*no change in any provisions related to this category*)
 - Payment to a person other than Company outside India : EC + SHEC (no surcharge to be applied here)

About us

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*"A dream is not that
which you see in sleep
A dream is that
which dose not let you sleep"*

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