



CBDT Rationalizes Safe Harbour Rules



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The CBDT has revised the Safe Harbour Rules w.e.f. 1 April 2017 vide Notification No. 46/2017/ F. No. 370142/6/2017-TPL. The revised Safe Harbour Rules provides for a decrease in the Safe Harbour margins for most of the eligible international transactions and the inclusion of low value adding intra group services as one of the eligible international transactions.

The revised margins for eligible international transactions have been introduced as sub-rule (2A) in Rule 10TD which shall be applicable from the AY 2017-18 for three consecutive years. The existing option of Safe Harbour Rules under sub-rule (2) was available from AY 2013-14 for five consecutive years. However, an eligible assessee has the right to exercise the option under either sub-rule (2) or sub-rule (2A) of Rule 10TD, whichever is beneficial.

The following table gives a summary of the changes in the Safe Harbour margins as prescribed in sub-rule (2A) of Rule 10TD:

Eligible international transaction	Safe Harbour Rule 10TD (2)		Revised Safe Harbour Rule 10TD (2A)		
	Threshold limit prescribed	Safe Harbour margin	Threshold limit prescribed	Safe Harbour margin	
Provision of software development services (other than contract R&D) and information technology enabled services	INR 500 crores or less	20 percent or more of Operating Costs	INR 100 crore or less	17% or more of the operating expenses	
	Above INR 500 crores	22 percent or more of Operating Costs	Exceeds INR 100 crore but does not exceed INR 200 crore	18% or more of the operating expenses	
Provision of knowledge process outsourcing services	None	25 percent or more of Operating Costs	Turnover Less than or equal to 200 crores	If Employee Cost to Operating Expenses (including emoluments to employees and outsourcing cost)	
				Prescribed Condition	
				Employee Cost to Operating Expenses	Operating Profit Margin
				< 40%	18% or more
≥ 40% but < 60%	21% or more				
≥ 60%	24% or more				

(Contd..)

Eligible international transaction	Safe Harbour Rules Rule 10TD (2)		Revised Safe Harbour Rules 10TD (2A)		
	Threshold limit prescribed	Safe Harbour margin	Threshold limit prescribed	Safe Harbour margin	
Interest on Advancing of Intra Group Loans	Loan Amount ≤ INR 50 Crores	SBI Base Rate + 150 Basis Points	Amount of Loan is Denominated in INR	Rate of Interest = 1 year marginal cost of funds lending rate of SBI as on 1 st April of the relevant year plus basis point as per Column (A) below	
	Loan Amount > INR 50 Crores	SBI Base Rate + 300 Basis Points	Amount of Loan is Denominated in Foreign Currency	Rate of Interest = 6 month LIBOR of the relevant currency as on 30 th September of the relevant year plus basis point as per Column (B) below	
Prescribed Conditions					
			CRISIL Credit Rating of Associated Enterprises	(A)	(B)
			AAA to A	175	150
			BBB-, BBB or BBB+ or Equivalent	325	300
			BB to B	475	450
			C to D	625	600
			Credit rating not available and total loan in INR provided to all AEs do not exceed INR 100 crores as on 31 March of the relevant previous year	425	NA
			Credit rating not available and total loan provided to all AEs do not exceed equivalent to INR 100 crores as on 31 March of the relevant previous year	NA	400

(Contd...)

Eligible international transaction	Safe Harbour Rules Rule 10TD (2)		Revised Safe Harbour Rules 10TD (2A)	
	Threshold limit prescribed	Safe Harbour margin	Threshold limit prescribed	Safe Harbour margin
Providing corporate guarantee (other than comfort letter, performance guarantee, etc.)	INR ≤ 100 crores	2 percent p.a. or more	INR ≤ 100 crores	Not less than 1% p.a. of the amount guaranteed
	INR > 100 crores	1.75 percent p.a. or more	INR > 100 crores	
Provision of contract research and development services wholly or partly relating to software development	None	≥ 30 percent	INR ≤ 200 crores	≥ 24 percent
Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	None	≥ 29 percent	INR ≤ 200 crores	≥ 24 percent
Manufacture and export of core auto components	None	≥ 12 percent	No Change	
Manufacture and export of non-core auto components	None	≥ 8.5 percent	No Change	
Receipt of Low Value Intra-Group Services	Absent		<p>Value of international transaction including a mark- up on cost not exceeding 5%, shall not exceed INR 10 crores.</p> <p>The following shall be required to be certified by an accountant:</p> <ol style="list-style-type: none"> 1.Method of cost pooling 2.Exclusion of shareholder costs duplicate cost from the cost pool 3.Reasonableness of the allocation key used by overseas AE for allocation of cost to the assessee 	

Our Comments

The revised safe harbour scheme comes at a time when the tax compliance burden of MNCs is set to go up on account of a global effort coordinated by the Organization for Economic Cooperation and Development (OECD) to tackle aggressive tax planning of businesses. The safe harbor margins have been rationalized and made more taxpayer friendly. However, reducing the threshold limit of outsourcing activities from INR 500 crores to INR 200 crores may not go well with the taxpayers having international transactions more than INR 200 crores. The concept of low-value added intragroup services (management fees) was introduced in BEPS Action Plan 13 wherein such services are defined to mean activities which are not the principle business activities of the entity providing such services. The introduction of such safe harbour category will help many multinational companies having intra-group transaction value of less than or equal to INR 10 crores.

Disclaimer

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Thank you



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Phone : +91-80-42424747
Email ID : info@pierianservices.com
Web : www.pierianservices.com