

Tax Alert | Safe Harbour Rules

21 May 2020

India issued Safe harbour rates for FY 2019-20 for determining arm's length price for certain specified transactions

Background:

The Central Board of Direct Taxes (CBDT) issued a gazette notification on 20 May 2020, to specify the safe harbour rates applicable for FY 2019-20, for determining arm's length rates for certain specified international transactions. The gazette notification states that the same rates as were applicable during the last three financial years, i.e., FY 2016-17 to FY 2018-19, would be applicable for FY 2019-20, as well.

Unlike earlier safe harbour notifications by the CBDT in 2013 and 2017, which gave safe harbour rates for 5 years and 3 years, respectively, the current notification provides safe harbour rates for only one year, i.e., for FY 2019-20.

Safe harbour rates applicable for FY 2019-20:

Safe harbour rates provide arm's length price issued by the CBDT for specified international transactions. In case a taxpayer undertakes certain specific international transactions at the specified safe harbour rates, it will be acceptable by the Income tax authorities and no further transfer pricing audit, and consequent adjustment, will be made for those international transactions.

Safe harbour rates and other conditions

Sl. No.	International transactions	Monetary Threshold	Safe harbour rates
1.	Software development services and information technology enabled services	Up to Rs. 100 crore	17%
		Rs. 100 crores to Rs. 200 crores	18%
2.	Knowledge process outsourcing services	Up to Rs. 200 crores and employee cost to total cost ratio is:	
		Up to 40%	18%
		40% to 60%	21%
		Greater than 60%	24%
3.	Contract Research and Development services relating to software development	Up to Rs. 200 crores	24%
4.	Contract Research and Development services relating to generic pharmaceutical drugs	Up to Rs. 200 crores	24%
5		CRISIL rating of AE:	One year marginal cost of funds lending rate of

Sl. No.	International transactions	Monetary Threshold	Safe harbour rates
	Intra group loans denominated in Indian currency		SBI as on 1 st April, 2019 plus
		AAA to A or its equivalent	175 bps
		BBB-, BBB, BBB+ or Equivalent	325 bps
		BB to B or its equivalent	475 bps
		C to D or its equivalent	625 bps
		Credit rating of AE not available and the aggregate sum of loan advanced to AEs as on March 31, 2020 does not exceed Rs. 100 crore	425 bps
6	Intra group loans denominated in foreign currency	CRISIL Rating of AE:	Six month's LIBOR of the relevant currency as on 30 September, 2019 plus
		AAA to A or its equivalent	150 bps
		BBB-, BBB, BBB+ or Equivalent	300 bps
		BB to B or its equivalent	450 bps
		C to D or its equivalent	600 bps
		Credit rating of AE not available and the aggregate sum of loan advanced to AEs as on March 31, 2020 does not exceed Rs. 100 crore.	400 bps
7	Provision of corporate guarantee	No threshold	1% of the amount guaranteed
8.	Manufacture and export of core auto components	No threshold	Operating cost plus 12%
9.	Manufacture and export of non-core auto components	No threshold	Operating cost plus 8.5%
10.	Receipt of low value adding intra group services (IGS)	Total value of IGS does not exceed Rs 10 crores.	The value of transactions cannot include margin of more than 5%

Taxpayers opting for the Safe Harbour Rules for FY 2019-20 will need to file Form 3CEFA with the Assessing Officer, on or before the due date of furnishing return of income for FY 2019-20, i.e., by 30 November, 2020.¹

The taxpayer must file the return of income either before or along with Form 3CEFA.

¹ Due date as prescribed by the Indian Government vide its Press Release dated 13 May 2020.

Conclusion:

- The safe harbour rates were long awaited. Taxpayers who wanted to opt for safe harbour rates for FY 2019-20, had no clarity regarding the applicable safe harbour rates for the year, and were not able to close their financial statements accordingly.
- It may be useful to mention here that the Finance Act, 2020 had amended safe harbour provisions in the Income-tax Act, 1961, to cover profit attribution for permanent establishment. The CBDT's gazette notification does not specify profit attribution for permanent establishments.



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites).

DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2020 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited