



Tax alert: Safe Harbor Rules for FY 2023-24 notified with extension of timeline

5 December 2024

The CBDT has issued a notification on 29 November 2024 to roll over the safe harbour provisions to Financial Year 2023-24. The CBDT has also given an extension of 15 days for filing Form for opting safe harbour and for filing the Income tax return in Transfer Pricing cases so that relevant taxpayers can make necessary compliance. In addition, the notification also introduced safe harbour for foreign companies engaged in the business of diamond mining and sale of raw diamonds in India.

In a nutshell



The notification has rolled over last year's safe harbour rates to FY 2023-24 with respect to the eligible international and specified domestic transactions.



Considering that the notification issued by the Government is delayed and the taxpayers would not have time to apply for safe harbour, the government has also extended the due date of applying for safe harbour and for filing return of income in TP cases by 15 days to 15th December.



The notification also introduced new safe harbour provisions for certain foreign companies engaged in the business of diamond mining and sale of raw diamonds from any Notified Special Zone(s) in India. A new Form (Form 3CEFC) has been prescribed for the same.



Scroll down to read the detailed alert

Background

The Safe Harbour Rules ('the Rules') were introduced in 2013 with the intent to simplify the transfer pricing compliance and audit for certain small and medium enterprises. In 2017, these Rules were revised wherein the eligibility criteria and safe harbour rates for eligible international transactions and specified domestic transactions were updated. The applicability of these Rules has been extended from time to time.

Safe Harbour for FY 2023-24

For FY 2023-24, the notification¹ has been issued by the Central Board of Direct Taxes ('CBDT') wherein the safe harbour rates and other conditions provided for the international transactions and specified domestic transactions for the earlier years has been rolled over to FY 2023-24 as well. The covered international transactions and specified domestic transactions along with the prescribed rates for FY 2023-24 are provided in **Annexure – I**.

Extension of the due date for applying safe harbour and filing

As per the Rules², the due date for filing the application for opting for safe harbour is on or before the due date of filing of return of income i.e., on or before **30th November 2024** for FY 2023-24. However, considering the administrative difficulties in filing the application by the taxpayers in opting for safe harbour as per the notification issued on 29th November, the CBDT has also issued a separate Circular³ on 30 November 2024 to provide extension of the due date to **15th December 2024**. The taxpayers can opt for safe harbour and furnish the return of income in transfer pricing cases up to 15th December 2024.

Safe harbour for Diamond sellers:

1. Eligible assessee - The safe harbour can be opted for by a foreign company which is engaged in business of diamond mining.
2. Eligible business – The safe harbour is provided for selling raw diamonds in any notified special zone⁴ in India.
3. Safe harbour rate – The rate of 4% or more of the gross receipts from the eligible business has been provided as safe harbour rate for income chargeable to tax under the head "Profits and gains of business or profession" for such business. No further deduction of any expense or depreciation or set off of any brought forward losses or unabsorbed depreciation would be allowed.
4. Application for Safe harbour – A new application Form, Form No. 3CEFC has been issued for opting safe harbour for sale of diamonds. The detailed provisions have been provided under Rule 10TIA to 10TIC of the Rules.
5. Due date for opting safe harbour - Eligible taxpayers can opt for safe harbour at any time before furnishing the return of income under section 139 of the Act for the relevant previous year.
6. Rejection of application – The assessing officer may declare the option of safe harbour invalid in case of furnishing incorrect facts or concealment of facts after giving an opportunity of being heard to the taxpayer.
7. Mutual Agreement Procedure (MAP) – The Rules provide that the taxpayer opting for Safe harbour shall not be eligible to invoke MAP under the Double Tax Avoidance Agreement with other country.

¹ Income-tax (Tenth Amendment) Rules, 2024 vide Notification dated 29 November 2024

² As per Rule 10 TE of the I-T Rules, the assessee shall furnish a Form 3CEFA, complete in all respects, to the Assessing Officer on or before the due date specified in Explanation 2 below sub-section (1) of section 139 for furnishing the return of income.

³ Circular No. 18/2024 dated 30 November 2024

⁴ any notified special zone as referred to in clause (e) of Explanation 1 to clause (i) of sub-section (1) of section 9;

Concluding remarks

While presenting the Finance Bill for 2024, the Hon'ble Finance Minister had stated that the safe harbor regime would be made more attractive to the taxpayers in order to reduce litigation. In light of this, taxpayers were anticipating certain revamp to the existing safe harbour provisions for FY2023-24 as well. However, considering that there have been no changes in the rates prescribed for FY 2023-24, it may be expected that the Government would revamp the safe harbor provisions and make it more efficient and attractive for taxpayers from FY 2024-25.

Annexure I

Sl. No	Eligible International Transaction	Threshold	Safe Harbor Rates as per Rule 10TD														
1	Provision of: Software Development Services and/ or Information Technology Enabled Services	Upto INR 100 crores	Operating profit margin not less than - 17%														
		INR 100 to 200 crores	Operating profit margin not less than - 18%														
2	Provision of Knowledge Process Outsourcing Services	Up to INR 200 crores and employee cost to total cost ratio is:															
		<40%	Operating profit margin not less than - 18%														
		≥ 40% but < 60%	Operating profit margin not less than - 21%														
		≥ 60%	Operating profit margin not less than - 24%														
3	Provision of Contract Research and Development services wholly or partly relating to Generic Pharmaceutical Drugs	Up to INR 200 crores	24%														
4	Provision of Specified Contract Research and Development Services wholly or partly relating to Software Development	Up to INR 200 crores	24%														
5	Advancing of Intra-group Loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency.	Credit rating of the AE	Reference rate of the relevant foreign currency as on 30 September of relevant previous year plus:														
			<table border="1"> <thead> <tr> <th>Currency</th> <th>6 months reference rate</th> </tr> </thead> <tbody> <tr> <td>US Dollar</td> <td>SOFR + 45 bps</td> </tr> <tr> <td>Euro</td> <td>EURIBOR</td> </tr> <tr> <td>UK Pound Sterling</td> <td>SONIA + 30 bps</td> </tr> <tr> <td>Japanese Yen</td> <td>TORF + 10 bps</td> </tr> <tr> <td>Australian Dollar</td> <td>BBSW</td> </tr> <tr> <td>Singapore Dollar</td> <td>SORA + 45 bps</td> </tr> </tbody> </table>	Currency	6 months reference rate	US Dollar	SOFR + 45 bps	Euro	EURIBOR	UK Pound Sterling	SONIA + 30 bps	Japanese Yen	TORF + 10 bps	Australian Dollar	BBSW	Singapore Dollar	SORA + 45 bps
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<i>a) aggregate sum of loan advanced to AEs as on March 31 of relevant previous year, does not exceed INR 250 crores:</i>																	
AAA, AA+, AA, AA-, A+, A, A- or its equivalent	150 bps																
BBB+, BBB, BBB- or its equivalent	300 bps																

Sl. No	Eligible International Transaction	Threshold	Safe Harbor Rates as per Rule 10TD
		BB+, BB, BB-, B+, B, B-, C+, C, C-, D or its equivalent or where credit rating of AE not available.	400 bps
		<i>b) aggregate sum of loan advanced to AEs as on March 31 of relevant previous year, does not exceed INR 250 crores</i>	
		AAA, AA+, AA, AA-, A+, A, A- or its equivalent	150 bps
		BBB+, BBB, BBB- or its equivalent	300 bps
		BB+, BB, BB-, B+, B, B- or its equivalent	450 bps
		C+, C, C-, D or its equivalent or where credit rating of AE not available	600 bps
6	Advancing of Intra-group Loans where the amount of loan is denominated in Indian Rupees (INR)	Credit rating of the AE	One-year marginal cost of funds lending rate of SBI as on 1st April of relevant previous year 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, of relevant previous year, does not exceed INR 100 crores	425 bps	
7	Provision of Corporate Guarantee	<ul style="list-style-type: none"> Amount guaranteed does not exceed 100 crores or Exceeds 100 crores, and the credit rating of the AE, done by an agency registered with the SEBI, is of the adequate to highest safety 	Not less than 1% p.a of the amount guaranteed

Sl. No	Eligible International Transaction	Threshold	Safe Harbor Rates as per Rule 10TD
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, including the prescribed markup, does not exceed INR 10 crores	The markup not exceeding 5%

Sl. No	Eligible specified domestic transaction	Circumstances
1	Supply of electricity, transmission of electricity, wheeling of electricity	Tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined [or the methodology for determination of the tariff is approved] by the Appropriate Commission in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).
2	Purchase of milk or milk products	<p>The price of milk or milk products is determined at a rate which is fixed on the basis of the quality of milk, namely, fat content and Solid Not FAT (SNF) content of milk ; and</p> <p>(a) the said rate is irrespective of,</p> <ul style="list-style-type: none"> (i) the quantity of milk procured; (ii) the percentage of shares held by the members in the co-operative society; (iii) the voting power held by the members in the society; <p>and</p> <p>(b) such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain.</p>



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