

CBDT extends the applicability of Safe-harbour regime to FY 2020-21 relevant to AY 2021-22

Rule 10TD of the Income-tax Rules, 1962 provides for a safe-harbour regime under Indian transfer pricing regulations, which is an option that can be exercised by an eligible taxpayer. As per the said Rule, an international transaction carried out by such taxpayer with its associated enterprise shall be accepted by the income-tax authorities, if the transaction meets the profit / mark-up / interest rate prescribed under the said Rule. Till 24th September 2021, the safe-harbour regime was available only up to Financial Year 2019-20 (Assessment Year 2020-21).

Now, the Central Board of Direct Taxes (CBDT) vide its notification no. 117/2021 dated 24th September 2021 has extended the applicability of the safe-harbour regime to Financial Year 2020-21 as well i.e., Assessment Year 2021-22. The arm's length price prescribed under safe harbour rule is enumerated herein below:

Sr. No.	Eligible International Transaction	Threshold limit of international transaction under new regime	Profit Level Indicator (PLI)	Rate of safe harbour margins under new regime is not less than
1	Provision of software development services and provision of information technology-enabled services (ITES)	Less than Rs. 100 Crore Exceeds Rs. 100 Crore but Less than Rs. 200 Crore		OP / OE [^] 17% 18%
2	Advancing of intra-group loans denominated in foreign currency	Interest rate is not less than 6 months LIBOR as on 30 th September of the relevant previous year plus	-	@ See Table given below

Sr. No.	Eligible International Transaction	Threshold limit of international transaction under new regime	Profit Level Indicator (PLI)	Rate of safe harbour margins under new regime is not less than
3	Advancing of intra-group loans in Indian Rupees	Interest rate is not less than 1 year marginal cost of funds lending rate of State bank of India as on 1 st April of the relevant previous year plus	-	@ See Table given below
4	Providing corporate guarantee			1%
5	Provision of knowledge process outsourcing services	Does not exceed Rs.200 crore and Employee cost in relation to the operating expense is <ul style="list-style-type: none"> ♦ $\geq 60\%$ ♦ $\geq 40\%$ but $< 60\%$ ♦ $< 40\%$ 		OP / OE [^] 24% 21% 18%

Sr. No.	Eligible International Transaction	Threshold limit of international transaction under new regime	Profit Level Indicator (PLI)	Rate of safe harbour margins under new regime is not less than
6	Provision of contract research and development services wholly or partly relating to software development and provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	Does not exceed Rs. 200 crore		OP / OE [^] 24%
7	Manufacture and export of core auto components and manufacture and export of non-core auto components			OP / OE [^] 12% and 8.5% respectively
8	Receipt of low value-adding intra-group services	Does not exceed a sum of Rs. 10crore (including the mark-up not exceeding 5%)*		

*provided that the method of cost pooling, the exclusion of shareholder costs and duplicate costs from the cost pool and the reasonableness of the allocation keys used for allocation of costs to the assessee by the overseas associated enterprise (**AE**), is certified by an accountant

[^] Operating Profit / Operating Expenses

@ Rate of safe harbour margins is not less than-

CRISIL Rating	Basis Points if loan is in Foreign Currency	Basis Points if loan is in Indian Rupees
AAA to A	150	175
BBB-, BBB or BBB+	300	325
BB to B	450	475
C to D	600	625
NA and loan advanced to the Associate Enterprise (AE) including loans to all AEs does not exceed Rs. 100 Crore in the aggregate as on 31 st March of the relevant previous year	400	425

^Operating Profit / Operating Expenses

CNK COMMENT: This is a welcome move by the CBDT to enhance ease of doing business in India. Eligible assessee who has entered into eligible international transaction and wishes to opt for safe harbour margins for FY 2020-21 (AY 2021-22) can now do so by filing Form 3CEFA on or before the due date of filing of tax return, which is extended to 28th February 2022 for AY 2021-22.

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