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Newsflash: Notification No. 25/2020 – CBDT notifies Safe Harbour Rules for Assessment Year 2020-21

1.0 Background

To reduce transfer pricing disputes, the Central Board of Direct Taxes ('CBDT') issued Safe Harbour Rules ('SHR') in September 2013. Safe Harbour Rules refers to the circumstances in which the tax authorities shall accept the prescribed transfer price declared by the taxpayer to be at arm's length. The rules are optional and provide the transfer price/minimum operating margin a tax payer may declare for certain categories of transactions.

The transactions covered under Safe Harbour Rules include transactions (with Significant risk) relating to the provisions of software services('IT'), Information Technology-enabled services('ITeS'), Knowledge process outsourcing ('KPO') services, contract research and development services for software development and generic pharmaceutical drugs. These were initially issued vide Notification No. 73/2013[F. No. 142/28/2013-TPL] dated 18 September 2013 and were applicable for AY 13-14 to AY 17-18.

Subsequently, the CBDT issued SHR with revised margins in the range of 17-24% vide Notification No 46/2017/F.No.370142/6/2017-TP dated 7 June 2017. These SHR were applicable from AY 17-18 to AY 19-20. **CBDT has now further extended the applicability of existing SHR for the AY 2020-21 vide Notification No 25/2020, without any changes. Prescribed margins as per the existing SHR are reproduced below for ready reference.**

Sl. No.	Eligible international transactions	Safe Harbour rates- applicable for AY 2020-2021
1	Provision of Software development services (IT) and Information Technology Enabled Services (ITES)	Operating profit margin to operating expense <ul style="list-style-type: none">Where the aggregate value of such transactions ≤ Rs.100 crore – not less than 17%Where the aggregate value of such transactions > Rs.100 crore ≤ Rs.200 crore – not less than 18%
2	Provision of knowledge process outsourcing services (KPO)	The value of international transaction ≤ Rs.200 crore and the operating profit margin to operating expense is – <ul style="list-style-type: none">Not less than 24%, if the Employee Cost to Operating Expense is at least 60%Not less than 21% ,if the Employee Cost to Operating Expense is 40% or more but less than 60%; orNot less than 18%, if the Employee Cost to Operating Expense does not exceed 40%
3	Provision of corporate guarantee	Not less than 1% per annum on the amount guaranteed
4	Provision of specified	The operating profit margin to operating expense not less

Sl. No.	Eligible international transactions	Safe Harbour rates- applicable for AY 2020-2021
	contract research and development services wholly or partly relating to software development	than 24% , where the value of the international transaction is ≤ Rs.200 crore
5	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	The operating profit margin to operating expense not less than 24% , where the value of the international transaction is ≤ Rs.200 crore
6	Manufacture and export of:	Operating profit margin to operating expense:
	- core auto components	• Not less than 12%
	- non-core auto components	• Not less than 8.5%
7	Receipt of low value-adding intra-group services	Aggregate value of such transactions does not exceed Rs.10 crore (including markup 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, is certified by an accountant.
8	Advancing of intra-group loans where the amount of loan is denominated in Indian Rupees (INR)	The interest rate declared in relation to the eligible international transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus basis points as below:
		• 175 basis points , where the AE has CRISIL credit rating between AAA to A or its equivalent
		• 325 basis points , where the AE has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent
		• 475 basis points , where the AE has CRISIL credit rating between BB to B or its equivalent
		• 625 basis points , where the AE has CRISIL credit rating between C to D or its equivalent
		• 425 basis points , where credit rating of the AE is not available and aggregate amount of loan advanced to all AEs as on 31st March of the relevant previous year < Rs.100 crore
9	Advancing of intra-group loans referred to in item (iv) of rule 10TC where the amount of loan is denominated in foreign currency .	The interest rate declared in relation to the eligible international transaction is not less than the six-month London Inter-Bank Offer Rate of the relevant foreign currency as on 30th September of the relevant previous year plus basis points as below:
		• 150 basis points , where the AE has CRISIL credit rating between AAA to A or its equivalent

Sl. No.	Eligible international transactions	Safe Harbour rates- applicable for AY 2020-2021
		<ul style="list-style-type: none"> • 300 basis points, where the AE has CRISIL credit rating of BBB-, BBB or BBB+ or its equivalent • 450 basis points, where the AE has CRISIL credit rating between BB to B or its equivalent • 600 basis points, where the AE has CRISIL credit rating between C to D or its equivalent • 400 basis points, where credit rating of the associated enterprise is not available and aggregate amount of loan advanced to all associated enterprises as on 31st March of the relevant previous year < Rs.100 crore

2.0 Our Comments

Notification of SHR for AY 2020-21 was much awaited, however does not provide any changes in existing rules. Generally, taxpayers rely on benchmarking analysis to set the transfer price or alternatively may opt for SHR, which provides certainty and helps in avoiding long drawn litigation.

Only a small percentage of companies had historically gone for SHR and it was anticipated that Government would relook at the rates to make it more appealing. Such expectations were further intensified by current pandemic circumstances and economic disruptions by Covid-19.

However, given that Covid-19 impact started in last month of FY 2019-20 (i.e. AY 2020-21), major impact could be expected in FY 2020-21. This could probably be the reason why Government has currently extended the rules only for one year and further reliefs could be expected in due course.



For further information please contact:

RSM Astute Consulting Pvt. Ltd.

13th Floor, Bakhtawar, 229, Nariman Point, Mumbai - 400021.

T: (91-22) 6108 5555 / 6121 4444

F: (91-22) 6108 5556 / 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi - NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham, and Jaipur



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This newsflash has summarized the safe harbor rules as notified by the CBDT for AY 2020-21. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said notification and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

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