



**INCOME TAX ALERT**

# N. A. SHAH **BULLETIN**

**June 2017**

**N. A. SHAH ASSOCIATES LLP**  
Chartered Accountants



### **CBDT Notification dated 07.06.2017 on amended safe harbor rules**

- i. With a view to reduce the number of transfer pricing audits and prolonged litigations, Finance (No.2) Act, 2009 has inserted section 92CB empowering Central Board of Direct Tax ('CBDT') to make rules for safe harbour.
- ii. The 'Safe Harbour' means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee.
- iii. The existing safe harbor rules prescribe, amongst other things, the eligible taxpayer, eligible transactions, the target operating profit margin/ safe harbour rates, the procedure for filing, the timeline for audit and also a new Form 3CEG (Application to opt for safe harbour).
- iv. CBDT vide notification dated 7 June 2017 has amended the safe harbour rules wherein certain new circumstances (New Rule 2A) has been prescribed for the existing eligible transactions, receipt of low value adding intra-group services from one or more members of its group has been added. However, while doing so, the existing list of eligible transactions and corresponding safe harbor rates as prescribed in sub-rule (2) of the Rules will continue to remain effective.
- v. The assessee has right to choose the most beneficial option [i.e. as per sub-rule (2) or sub-rule (2A)] while opting for safe harbour.
- vi. These provisions shall come into force from 1 April 2017 (i.e. AY 2017-18 onwards).
- vii. Presently, safe harbour option validly exercised for transactions listed in sub-rule (2) shall remain in force for the period specified in Form 3CEFA or period of **five years** whichever is less. Whereas safe harbor option validly exercised for sub-rule (2A) shall continue to remain in force for the period specified in Form 3CEFA or a period of **three years** whichever is less.
- viii. The above notification also provides the definition of Accountant, Employee Cost, and low value adding intra group services.

- ix. We have summarized below the list of eligible transactions and its safe harbour rates as per existing sub-rule (2) and new sub-rule (2A) of the Rules as under:

Sr. No.	Eligible International transactions	Quantum of International transactions and Safe Harbour rates <sup>1</sup>	
		As per existing sub-rule (2) of Rule 10TD of the Rules	As per new sub-rule (2A) of Rule 10TD of the Rules
1	Provision of software development services	Upto INR 500 crores - OP/OE should not be less than 20%  Exceeding INR 500 crores - OP/OE should not be less than 22%	Upto INR 100 crores - OP/OE should not be less than 17%  Exceeding INR 100 crores but upto INR 200 crores - OP/OE should not be less than 18%
2	Provision of information technology enabled services	Upto INR 500 crores - OP/OE should not be less than 20%  Exceeding INR 500 crores - OP/OE should not be less than 22%	Upto INR 100 crores - OP/OE should not be less than 17%  Exceeding INR 100 crores but upto INR 200 crores - OP/OE should not be less than 18%
3	Provision of knowledge process outsourcing services	OP/OE should not be less than 25%.	Upto INR 200 crores -  OP/OE should not be less than 24% and EC/OE should be atleast 60%; or  OP/OE should not be less than 21% and EC/OE should be between 40% to 60%; or  OP/OE should not be less than 18% and EC/OE should not exceed 40%  (where EC denotes Employee Cost)
4	Advancing of intra-group loans denominated in Indian Rupees	If loan amount does not exceed INR 50 crores – Interest rate should not be less than base rate of SBI as on 30 June of relevant year + 150 basis points  If loan amount exceeds INR 50 crores – Interest rate should not be	Interest rate should not be less than 1 year marginal cost of funds lending rate of SBI as on 1 April of relevant year + basis points on the basis of CRISIL credit rating (or its equivalent) of AE as follows –

<sup>1</sup> Wherein OP – Operating Profit, OE-Operating Expense, AE – Associate Enterprise

		less than base rate of SBI as on 30 June of relevant year + 300 basis points	<table border="1"> <thead> <tr> <th>Credit rating of AE</th> <th>Basis points</th> </tr> </thead> <tbody> <tr> <td>AAA to A</td> <td>175</td> </tr> <tr> <td>BBB-, BBB, BBB+</td> <td>325</td> </tr> <tr> <td>BB to B</td> <td>475</td> </tr> <tr> <td>C to D</td> <td>625</td> </tr> <tr> <td>No credit rating available and loan advanced to AE including loans to all AEs does not exceed in aggregate INR 100 crores as on 31 March of relevant year</td> <td>425</td> </tr> </tbody> </table>	Credit rating of AE	Basis points	AAA to A	175	BBB-, BBB, BBB+	325	BB to B	475	C to D	625	No credit rating available and loan advanced to AE including loans to all AEs does not exceed in aggregate INR 100 crores as on 31 March of relevant year	425
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5	Advancing of intra-group loans denominated in foreign currency	No provision earlier	<p>Interest rate should not be less than 6 months LIBOR as on 30 September of relevant year + basis points on the basis of CRISIL credit rating (or its equivalent) of AE as follows –</p> <table border="1"> <thead> <tr> <th>Credit rating of AE</th> <th>Basis points</th> </tr> </thead> <tbody> <tr> <td>AAA to A</td> <td>150</td> </tr> <tr> <td>BBB-, BBB, BBB+</td> <td>300</td> </tr> <tr> <td>BB to B</td> <td>450</td> </tr> <tr> <td>C to D</td> <td>600</td> </tr> <tr> <td>No credit rating available and loan advanced to AE including loans to all AEs does not exceed in</td> <td>400</td> </tr> </tbody> </table>	Credit rating of AE	Basis points	AAA to A	150	BBB-, BBB, BBB+	300	BB to B	450	C to D	600	No credit rating available and loan advanced to AE including loans to all AEs does not exceed in	400
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			aggregate INR 100 crores as on 31 March of relevant year
6	Providing corporate guarantee	Upto INR 100 crores – commission should not be less than 2% p.a.  Exceeding INR 100 crores – commission should not be less than 1.75% p.a.	Commission should not be less than 1% p.a.
7	Provision of contract research and development services wholly or partly relating to software development	OP/OE should not be less than 30%	Upto INR 200 crores - OP/OE should not be less than 24%
8	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	OP/OE should not be less than 29%	Upto INR 200 crores - OP/OE should not be less than 24%
9	Manufacture and export of core auto components	OP/ OE should not be less than 12%	OP/ OE should not be less than 12%
10	Manufacture and export of non-core auto components	OP/ OE should not be less than 8.5%	OP/ OE should not be less than 8.5%
11	Receipt of low value-adding intra-group services	No provision	International transaction, including mark-up not exceeding 5%, should not exceed INR 10 crores.  Provided that method of cost pooling, exclusion of shareholder costs and duplicate costs from the cost pool and reasonableness of allocation keys used for allocation of cost to assessee by AE is certified by an accountant.

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