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SECTION 3, SUB-SECTION (ii)]

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]**

Notification

New Delhi, theday of August, 2013

INCOME – TAX

In exercise of the power conferred under section 92CB read with section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These Rules may be called the Income-tax (....Amendment), Rules, 2013
(2) These shall come into force from the date of their publication in the official Gazette.
2. In the Income-tax Rules, 1962 (hereinafter referred to as Rules), -
(A) In Part-II, in sub-part D, after rule 10T, the following shall be inserted, namely:-

‘Safe Harbour Rules’

Definitions

10TA. For the purposes of this rule and rule 10TB to rule 10TG, -

- (i) “Software development services” mean the following, namely:-
- (a) business application software and information system development using known methods and existing software tools;
 - (b) support for existing systems;
 - (c) converting and/or translating computer languages;
 - (d) adding user functionality to application programmes;

- (e) debugging of systems;
 - (f) adaptation of existing software;
 - (g) preparation of user documentation,
- but does not include the research and development services ;

(ii) “Information Technology Enabled Services” means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:-

- (a) back office operations;
 - (b) call centres or contact centre services;
 - (c) data processing and data mining;
 - (d) insurance claim processing;
 - (e) legal databases;
 - (f) creation and maintenance of medical transcription excluding medical advice;
 - (g) translation services;
 - (h) payroll;
 - (i) remote maintenance;
 - (j) revenue accounting;
 - (k) support centres;
 - (l) website services;
 - (m) data search integration and analysis;
 - (n) remote education excluding education content development;
 - (o) clinical database management services excluding clinical trials,
- but does not include the research and development services;

(iii) “Knowledge processes outsourcing services” means following business processes outsourcing services provided mainly with the assistance or use of information technology, namely:-

- (a) geographic information system;

- (b) human resources services;
- (c) engineering and design services;
- (d) animation or content development and management;
- (e) business analytics;
- (f) financial analytics;
- (g) market research,

but does not include the research and development services ;

(iv) “intra-group loan” means loan advanced to wholly owned subsidiary being a non-resident, where the loan—

- (a) is sourced in Indian rupees;
- (b) is not advanced by an enterprise in the nature of financial company including bank or financial institutions or enterprise engaged in lending or borrowing in the normal course of business; and
- (c) does not include credit line or any other loan facility which has no fixed term for repayment;

(v) “corporate guarantee” means explicit corporate guarantee in respect of any short-term or long-term borrowing by its wholly owned subsidiary being a non-resident;

(vi) “contract research and development services wholly or partly relating to software development” means the following, namely:-

- (a) research and development producing new theorems and algorithms in the field of theoretical computer science;
- (b) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools;
- (c) development of Internet technology;
- (d) research into methods of designing, developing, deploying or maintaining software;
- (e) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information;

- (f) experimental development aimed at filling technology knowledge gaps as necessary to develop a software programme or system;
- (g) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and other areas);
- (h) upgradation of existing products where source code has been made available by the principal;

(vii) “core auto components” means the following, namely:

- (a) engine and engine parts including piston and piston rings; engine valves and parts; cooling systems and parts; and power train components;
- (b) transmission & steering parts, including gears, wheels, steering systems, axles and clutches;
- (c) suspension & braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs;

(viii) “Non-core auto components” mean auto components other than core auto components;

(ix) “No tax or low tax country or territory” means a country or territory in which-

maximum marginal rate of income-tax is zero or less than 15 per cent. in respect of the associated enterprise.

(x) “operating expense” means the costs of the assessee incurred during the course of its normal operations and in connection with eligible international transactions for the previous year including depreciation and amortization expenses relating to the assets used by the assessee, but excluding the following, namely:-

- (a) interest expense;
- (b) provision for unascertained liabilities;
- (c) pre-operating expenses;
- (d) loss arising out of translation of foreign currency items;
- (e) extra-ordinary items;
- (f) loss on sale of assets/investments of the assessee;
- (g) other items not relating to operating activities of the assessee;

(xi) “operating revenue” means the revenue of the assessee earned during the course of its normal operations and in connection with eligible international transactions for the previous year, but excluding the following, namely:-

- (a) interest income;
- (b) income arising out of translation of foreign currency items;
- (c) income on sale of assets/investments of the assessee;
- (d) refunds relating to income tax expense of the assessee;
- (e) provisions no longer required written back;
- (f) extra-ordinary items;
- (g) other items not relating to operating activities of the assessee;

(xii) “operating profit margin in relation to operating expense” means the ratio of operating profit, being the operating revenue in excess of operating expense, to the operating expense expressed in terms of per centage.

Eligible assessee

10TB. (1) Subject to provisions of sub rules (2) and (3), “eligible assessee” means a person who has exercised the option for application of safe harbour rules in the manner specified in sub-rule(1) of Rule 10TE, and who -

- (i) is engaged in providing software development services or information technology enabled services or knowledge processes outsourcing services, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal);
- (ii) has made any intra-group loan ;
- (iii) has provided a corporate guarantee;

- (iv) is engaged in providing contract research and development services wholly or partly relating to software development, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal);
- (v) is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a non-resident associated enterprise (hereinafter referred as foreign principal); or
- (vi) is engaged in the manufacture and export of core and non-core auto components and where ninety per cent or more of total turnover during the relevant previous year are in the nature of Original Equipment Manufacturer (OEM) sales.

(2) An eligible assessee, with insignificant risk, referred to in item (i) of sub-rule (1) shall be identified having regard to the following factors, namely:-

- (I) The foreign principal performs most of the economically significant functions involved, including critical functions such as conceptualization and design of the product and providing the strategic direction and framework, either through its own employees or through its other associated enterprises, while the eligible assessee carries out the work assigned to it by the foreign principal;
- (II) The capital and funds and other economically significant assets including intangibles required, are provided by the foreign principal or its other associated enterprise(s), and the eligible assessee is only provided a remuneration for the work carried out by it;
- (III) The eligible assessee works under the direct supervision of the foreign associated principal who not only has the capability to control or supervise but also actually controls or supervises the activities carried out, through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;
- (IV) The eligible assessee does not assume or has no economically significant realized risks, and if the conduct of the foreign principal shows that the eligible assessee is actually doing so, the contractual terms shall not be the final determinant;
- (V) The eligible assessee has no ownership right, legal or economic, on any intangible generated or on the outcome of any intangible generated or arising during the course of rendering of services, which vests with the foreign principal as evidenced by the contract as well as from the conduct of the parties.

(3) An eligible assessee, with insignificant risk, referred to in items (iv) and (v) of sub-rule (1) shall be identified having regard to the following factors, namely:-

- (I) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including critical functions such as conceptualization and design of the product and providing the strategic direction and framework, either through its own employees or through its associated enterprises while the eligible assessee carries out the work assigned to it by the foreign principal;
- (II) the foreign principal or its associated enterprise(s) provides the funds or capital and other economically significant assets including intangibles required for research or product development and also provides a remuneration to the eligible assessee for the work carried out by it;
- (III) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which has not only the capability to control or supervise but also actually controls or supervises research or product development, through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;
- (IV) the eligible assessee does not assume or has no economically significant realized risks, and if a contract shows that the foreign principal is obligated to control the risk but the conduct shows that the eligible assessee is doing so, the contractual terms shall not be the final determinant; and
- (V) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and is evidenced by the contract as well as the conduct of the parties.

Eligible international transaction

10TC. 'Eligible international transaction' means an international transaction between the "eligible assessee" and its 'associated enterprise', either or both of whom are non-resident, comprising of:

- (i) the provision of software development services where the aggregate value of such transactions entered into in the previous year does not exceed a sum of one hundred crore rupees;

- (ii) the provision of information technology enabled services where the aggregate value of such transactions entered into in the previous year does not exceed a sum of one hundred crore rupees;
 - (iii) the provision of knowledge process outsourcing services where the aggregate value of such transactions entered into in the previous year does not exceed a sum of one hundred crore rupees;
 - (iv) advance of intra-group loan;
 - (v) provision of corporate guarantee;
 - (vi) provision of contract research and development services wholly or partly relating to software development;
 - (vii) provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs;
 - (viii) manufacture and export of core auto components;
 - (ix) manufacture and export of non-core auto components,
- by the eligible assessee.

Safe Harbour

10TD. (1) Where an eligible assessee has entered into an eligible international transaction, the transfer price declared by the assessee in respect of such transaction shall be acceptable to income tax authorities in the circumstances as specified in sub-rule (2).

(2) The circumstances referred to in sub-rule (1) in respect of the eligible international transaction specified in column (2) of the Table below shall be as specified in the corresponding entry in column (3) of the said Table:-

S.No (1)	Eligible International Transaction (2)	Circumstances (3)
1.	Provision of software development services referred to in clause (i) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 20 per cent. or more.
2.	Provision of information technology enabled services referred to in clause (ii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 20 per cent. or more.

3.	Provision of knowledge process outsourcing services referred to in clause (iii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 30 per cent. or more.
4.	Advancing of intra-group loans referred to in clause (iv) of rule 10TC where the amount of loan does not exceed fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is equal to or greater than the base rate of State Bank of India (SBI) as on 30 th June of the relevant previous year plus 150 basis points.
5.	Advancing of intra-group loans referred to in clause (iv) of rule 10TC where the amount of loan exceeds fifty crore rupees.	The Interest rate declared in relation to the eligible international transaction is equal to or greater than the base rate of SBI as on 30 th June of the relevant previous year plus 300 basis points.
6.	Providing corporate guarantee referred to in clause (v) of rule 10TC where the amount guaranteed does not exceed one hundred crore rupees.	The commission or fee declared in relation to the eligible international transaction is at the rate of 2 per cent or more per annum on the amount guaranteed.
7.	Provision of contract research and development services wholly or partly relating to software development referred to in clause (vi) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 30 per cent. or more.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs referred to clause (vii) of rule 10TC.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is 29 per cent. or more.
9.	Manufacture and export of core auto components	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 12 per cent. or more.
10.	Manufacture and export of non-core auto components.	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is 8.5 per cent. or more.

(3) The provisions of sub-rules (1) and (2) shall be effective for the assessment years 2013-14 and 2014-15.

(4) For the removal of doubts, it is clarified that no comparability adjustment and allowance under second proviso to section 92C(2) shall be made to the transfer price declared by the eligible assessee and acceptable under sub-rules (1) and (2) above.

(5) For the removal of doubts, it is also clarified that provisions of sections 92D and 92E in respect of an international transaction shall continue to apply to an assessee, whether or not the assessee exercises his option for safe harbour in respect of the international transaction.

Procedure

10TE. (1) For the purposes of exercise of the option for safe harbour, every eligible assessee shall furnish a Form 3CEG, 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 filing the return of income for the relevant assessment year

(2) On receipt of the Form 3CEG, the Assessing Officer shall verify whether the assessee exercising the option is an eligible assessee and whether the transaction in respect of which the option is exercised is an eligible international transaction or not.

(3) Where after such verification the Assessing Officer finds that the option has been exercised by an eligible assessee in respect of an eligible international transaction, he shall proceed to verify whether the transfer price declared by the assessee in respect of such transaction is acceptable or not considering the circumstances specified in sub-rule (2) of rule 10TD.

(4) For the purposes of this rule, the Assessing Officer may require the assessee, by notice in writing, to furnish such information or documents or other evidence as he may consider necessary, and the assessee shall furnish the same within the time specified in such notice.

(5) Where-

(a) the assessee does not furnish the information or documents or other evidence required by the Assessing Officer; or

(b) the Assessing Officer finds that the assessee is not an eligible assessee; or

(c) the Assessing Officer finds that the transaction in respect of which the option referred to in sub-rule (1) has been exercised is not an eligible international transaction; or

(d) the Assessing Officer finds that the transfer price declared by the assessee in respect of an eligible international transaction is not acceptable considering the circumstances specified in sub-rule (2) of rule 10TD,

the Assessing Officer shall by order in writing declare the option exercised by the assessee to be invalid, and shall thereupon proceed to determine the arm's length price in respect of the international transactions entered into by the assessee in accordance with section 92C without having regard to the profit margin or the price as specified in sub-rule (2) of rule 10TD:

Provided that no order declaring the option exercised by the assessee to be invalid shall be passed without giving a reasonable opportunity of being heard to the assessee.

(6) For the purposes of making the verification referred to in sub-rules (3) to (6), the Assessing Officer may make a reference to the Transfer Pricing Officer under section 92CA, and thereupon the provisions of this rule shall apply to the Transfer Pricing Officer as they would apply to the Assessing Officer.

(7) Where no option for safe harbour is exercised under sub-rule (1) by an eligible assessee in respect of an eligible international transaction entered into by the assessee, the arm's length price in relation to the international transaction shall be determined in accordance with the provisions of sections 92C and 92CA without having regard to the profit margin or the price as specified in sub-rule (2) of rule 10TD.

Safe harbour Rules not to apply in certain cases

10TF. Nothing contained in rule 10TA to rule 10TE shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A or in a no tax or low tax country or territory.

Not eligible for MAP

10TG. Where transfer price in relation to an eligible international transaction declared by an eligible assessee is accepted by the income-tax authorities under section 92CB, the assessee shall not be entitled to invoke mutual agreement procedure under an agreement for avoidance of double taxation entered into with a country or territory outside India as referred to in sections 90 or 90A.

(B) In Appendix II, after Form No. 3CEF rule 10T, the following shall be inserted, namely:-

**“Form No. 3CEG
(See sub-rule (1) of rule 10 ...)
Application to Opt for Safe Harbour**

To,
The Assessing Officer
.....

Sir/Madam,

I propose to opt for the safe harbour rules under section 92CB of the Income-tax Act, 1961 read with rule 10TA to rule 10TG of Income-tax Rules, 1962. In this regard, I give below the necessary particulars:

1. Particulars relating to the eligible assessee:

- a. Full name of the assessee:
- b. Permanent account number:
- c. Address of the assessee:
- d. Nature of business or activities of the assessee:
- e. Status:
- f. Previous year ended:
- g. Assessment Year:

2. Eligible International Transaction:

Sl. No	Particulars in respect of eligible international transaction	Remarks
1.	<p>Has the eligible assessee entered into any international transaction in respect of the provision of software development services referred in item (i) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none">(a) Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.(b) Name of the country or territory in which AE (s) is located.(c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.(d) Description of the eligible international transaction.(e) Amount received/receivable for the services provided.(f) Operating profit margin in relation to operating expense declared(g) Whether transfer price acceptable considering the circumstances specified under rule 10TD (yes/no).	Yes/No

2.	<p>Has the eligible assessee entered into any international transaction in respect of the provision of information technology enabled services referred to in item (ii) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none"> (a) Name and address of the associated enterprises with whom the eligible international transaction has been entered into (b) Name of the country or territory in which AE (s) is located. (c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA. (d) Description of the eligible international transaction (e) Amount received for the services provided (f) Operating profit margin in relation to operating expense declared (g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no). 	Yes/No
3.	<p>Has the eligible assessee entered into any international transaction in respect of the provision of knowledge process outsourcing services referred to in item (iii) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none"> (a) Name and address of the associated enterprises with whom the eligible international transaction has been entered into (b) Name of the country or territory in which AE (s) is located. (c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA. (d) Description of the eligible international transaction (e) Amount received for the services provided (f) Operating profit margin in relation to operating expense declared. (g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no). 	Yes/No
4.	Has the eligible assessee advanced intra-group loans	Yes/No

	<p>as referred to in item (iv) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none"> (a) Name and address of the associated enterprises with whom the eligible international transaction has been entered into (b) Name of the country or territory in which AE (s) is located. (c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA. (d) Description of the eligible international transaction (e) Interest charged in respect of each lending (f) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no). 	
5.	<p>Has the eligible assessee provided corporate guarantees as referred to in item (v) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none"> (a) Name and address of the associated enterprises with whom the eligible international transaction has been entered into (b) Name of the country in which AE (s) is located. (c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA. (d) Description of the eligible international transaction (e) Commission/fee charged in respect of the transaction declared (f) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no). 	Yes/No
6.	<p>Has the eligible assessee entered into any international transaction in respect of the provision of contract research and development services wholly or partly relating to software development as referred to in item (vi) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <ul style="list-style-type: none"> (a) Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered 	Yes/No

	<p>into.</p> <p>(b) Name of the country or territory in which AE (s) is located.</p> <p>(c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.</p> <p>(d) Description of the eligible international transaction.</p> <p>(e) Amount received for the services provided.</p> <p>(f) Operating profit margin in relation to operating expense declared.</p> <p>(g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no).</p>	
7.	<p>Has the eligible assessee entered into any international transaction in respect of the provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs as referred to in item (vii) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <p>(a) Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.</p> <p>(b) Name of the country or territory in which AE (s) is located.</p> <p>(c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.</p> <p>(d) Description of the eligible international transaction.</p> <p>(e) Amount received for the services provided.</p> <p>(f) Operating profit margin in relation to operating expense declared.</p> <p>(g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no).</p>	Yes/No
8.	<p>Has the eligible assessee entered into any international transaction in respect of manufacturing and export of core auto components as referred to in item (viii) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <p>(a) Name and address of the associated</p>	Yes/No

	<p>enterprises (AE) with whom the eligible international transaction has been entered into.</p> <p>(b) Name of the country or territory in which AE (s) is located.</p> <p>(c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.</p> <p>(d) Description of the eligible international transaction.</p> <p>(e) Amount received/receivable in relation to such transaction.</p> <p>(f) Operating profit margin in relation to operating expense declared.</p> <p>(g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no).</p>	
9.	<p>Has the eligible assessee entered into any international transaction in respect of manufacturing and export of non-core auto components as prescribed in item (ix) of Rule 10TC?</p> <p>If Yes, provide the following details:</p> <p>(a) Name and address of the associated enterprises (AE) with whom the eligible international transaction has been entered into.</p> <p>(b) Name of the country or territory in which AE (s) is located.</p> <p>(c) Whether country or territory is a no tax or low tax country or territory as defined in rule 10TA.</p> <p>(d) Description of the eligible international transaction.</p> <p>(e) Amount received/receivable in relation to such transaction.</p> <p>(f) Operating profit margin in relation to operating expense declared.</p> <p>(g) Whether transfer price acceptable considering the circumstance specified under rule 10TD (yes/no).</p>	Yes/No

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I declare that to the best of my knowledge and belief, the information furnished herein is correct and truly stated.

Yours faithfully,

Place:

Date:

Eligible assessee

Notes:

1. Particulars of each eligible international transaction should be reported separately along with transfer price declared.
2. The application should be signed by the person authorized to sign the return of income under section 140.

FinMin comes out with draft rules for safe harbours

New Delhi, Aug. 14:

In an effort to reduce litigation with foreign companies, the Finance Ministry has issued draft rules for safe harbours.

The new rules, once notified, will define circumstances in which the Income Tax Authorities will accept the transfer price declared by assessee. These rules will be applicable in case of transaction or loan value is between Rs 50 crore and Rs 100 crore. The operating profit margin should be between 8.5 per cent and 20 per cent.

Safe harbour rules explain circumstances in which the Income-tax authorities will accept the transfer price declared by a tax payer. Transfer pricing refers to the pricing of all kinds of assets, services, and funds transferred within an organisation in a cross border transaction. It is used by an organisation to determine each arm's profit and loss separately.

These rules, once notified, will be applicable to four sectors including Information Technology, Information Technology enabled Services, Pharmaceutical and Auto Ancillaries-Original Equipment Manufacturers.

Apart from these sectors, activities of Financial Transactions-Outbound Loan and Financial Transaction-Corporate Guarantees will also be covered under the rules.

These rules will not be applicable to an international transaction entered into with an associated enterprise located in low tax jurisdiction having double taxation avoidance agreement with India. The new rules are based on recommendations of the N. Rangachary Committee.

Mixed bag

Meanwhile, experts have mixed views on the new draft rules. Mukesh Bhutani, Chairman, of BMR Advisors, said, "On an overall basis, as regards implications to software, IT and ITeS, the scope is restrictive as it covers only companies that earn an operating margin up to Rs 100 crore, meaning that it will not benefit most captives who have been engaged in disputes on adjustments.

Even for those who are entitled, it will benefit those tax payers where the tax administration have applied rates in excess of 20 per cent and that too if the safe harbour provisions are also, want to resolve past disputes."

Similarly, Vijay Iyer, Partner & National Leader (Transfer Pricing) with E&Y, felt that the exclusion of companies with turnover in excess of Rs 100 crore, would limit the number of takers for the safe harbour.

"Further, the high safe harbour for auto components and corporate guarantees may dampen the acceptability of the safe harbour," he added.

However, Iyer accepted that these rules will reduce litigation.

Echoing the same sentiment, Sunil Jain of J Sagar Associates said that the threshold amount is small and operating margin is on the higher side.

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**Press Information Bureau
Government of India
Ministry of Finance**

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CBDT Invites Suggestions from Stakeholders on Safe Harbour Rules

In order to reduce the increasing number of transfer pricing audits and prolonged disputes, the Finance (No.2) Act, 2009 w.r.e.f 1.4.2009 inserted a new section 92CB to provide that determination of arm's length price under section 92C or Section 92CA shall be subject to safe harbour rules. Vide this amendment, the Government of India had empowered the CBDT to make Safe Harbour rules. "Safe harbour" was defined to mean circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

Thereafter, the issuance of the Safe Harbour Rules was examined and discussed at various points of time, but no finality could be reached. Since a number of representations were received from different stakeholders to prescribe the safe harbor rules, the Prime Minister on July, 30, 2012 approved the constitution of a Committee to Review Taxation of Development Centres and the IT sector consisting of Shri N. Rangachary, Chairman of the Committee and three others (hereinafter called the Rangachary Committee) with broad terms of reference as under:

1. Engage in consultations with stakeholders and related government departments to finalize the approach to Taxation of Development Centres and suggest any circulars that need to be issued.
2. Engage in sector-wise consultations and finalize the safe harbour provisions announced in Budget 2010, sector-by-sector. The Committee will also suggest any necessary circulars that may need to be issued.
3. Examine issues relating to taxation of IT sector and suggest any clarifications that may be required

Subsequently, the Government of India vide OM dated 12th September, 2012 approved the considered suggestion of the Rangachary Committee that it may finalize the Safe Harbour Rules in the following sector/ activities:

- (i) IT Sector
- (ii) ITES Sector
- (iii) Contract R&D in the IT and Pharmaceutical Sector
- (iv) Financial transactions-Outbound loans
- (v) Financial Transactions-Corporate Guarantees
- (vi) Auto Ancillaries-Original Equipment Manufacturers

The Rangachary Committee consulted various stakeholders including sector related government departments, NASSCOM, CII, FICCI, ASSOCHAM, ICAI, etc. and submitted six reports on Taxation of Development Centres and IT Sector and other sectors as referred to in the OM dated 12th September, 2013.

On the basis of the recommendations of the Rangachary Committee in the first report on Taxation of Development Centres and IT Sector (which was posted on the website of the income tax department www.incometaxindia.gov.in on 30th June, 2013),

CBDT has issued the following circulars:

- Circular No. 1/2013 dtd. 17th January, 2013 on issues relating to Export of Computer Software under sections 10A, 10AA and 10B of the Act.
- Circular No. 6/2013 dtd. 29th June, 2013 on Conditions Relevant to Identify Development Centres engaged in Contract R&D Services with Insignificant Risk.

The Government of India has considered the other five reports of the Rangachary Committee. The major recommendations of the Rangachary Committee have been accepted, with some modifications, and the following decisions have been taken by Government:

- (1) Safe harbour for the sectors recommended by the Rangachary Committee shall be applicable for two assessment years beginning from 2013-14.
- (2) Safe harbour for various sectors, subject to certain ceilings, shall be as under –

SNo (1)	International Transaction (2)	Circumstances (3)
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1.	Provision of software development services other than contract R&D where the total value of international transaction does not exceed Rs 100 crore	The operating profit margin declared in relation to operating expense incurred is 20 per cent or more.
2.	Provision of information technology enabled services other than contract R&D where the total value of international transaction does not exceed Rs 100 crore	The operating profit margin declared in relation to operating expense is 20 percent or more.
3.	Provision of information technology enabled services being knowledge processes outsourcing services other than contract R&D where the total value of international transaction does not exceed Rs 100 crore	The operating profit margin declared in relation to operating expense is 30 percent or more.
4.	Advancing of intra-group loan to wholly owned subsidiary where the amount of loan does not exceed Rs 50 crore .	The Interest rate declared in relation to the international transaction, is equal to or greater than the base rate of State Bank of India (SBI) as on 30th June of the relevant previous year plus 150 basis points.
5.	Advancing of intra-group loans to wholly owned subsidiary where the amount of loan exceeds Rs. 50 crore.	The Interest rate declared in relation to the international transaction is equal to or greater than the base rate of SBI as on 30th June of the relevant previous year plus 300 basis points.
6.	Providing explicit corporate guarantee to wholly owned subsidiary where the amount guaranteed does not exceed Rs. 100 crore.	The commission or fee declared in relation to the international transaction is at the rate of 2 per cent or more per annum on the amount guaranteed.
7.	Provision of specified contract research and development services wholly or partly relating to software development.	The operating profit margin declared in relation to operating expense incurred is 30 per cent. or more.
8.	Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs.	The operating profit margin declared in relation to operating expense incurred is 29 per cent. or more.
9.	Manufacture and export of core auto components	The operating profit margin declared in relation to operating expense is 12 percent or more.
10.	Manufacture and export of noncore auto components.	The operating profit margin declared in relation to operating expense is 8.5 percent or more.

(3) Safe harbour rules shall not be applicable in respect of an international transaction entered into with an associated enterprise located in any country or territory notified under section 94A of the Income-tax Act, 1961, or in a no tax or low tax country or territory.

(4) Safe harbour rules shall be applicable only where a taxpayer exercises his option to be governed by such rules in a specified form to be furnished before the due date of filing of return.

(5) Where the Transfer Pricing Officer is of the opinion that the option exercised by the assessee is valid, he shall intimate acceptance of transfer price declared by the assessee to the assessing officer and the assessee within a period of six months from the end of the month in which reference under section 92CA is received from the assessing officer. Where he is of the opinion that the option exercised is not valid, he shall proceed to determine the arm's length price in respect of the international transactions entered into by the assessee in accordance with sections 92C and 92CA without having regard to the safe harbour margin or price as specified in the rules.

(6) A taxpayer opting for safe harbour rules shall not be allowed to invoke Mutual Agreement Procedure (MAP) provided under the relevant DTAA's.

(7) Where the safe harbour rules are not applicable in the case of an assessee, engaged in providing contract research and development services with insignificant risks, the Transactional Net Margin Method (TNMM) shall be considered as the most appropriate method for the determination of arm's length price unless it is shown by the assessee that it is not feasible to apply this method in the facts and circumstances of the case.

The draft rules along with the Second to the Sixth report of the Rangachary Committee have been posted on the website of the Income-tax Department. All stakeholders are requested to provide their comments, if any, by 26th August, 2013 to the Director (FT&TR) at her email id batsala.yadav@nic.in

DSM/RS/AK