Handbook on Safe Harbour Rules

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Transfer Pricing has emerged as one of the most significant areas of international taxation, driven by increasing globalization of businesses and the growing volume of cross-border transactions between associated enterprises. Ensuring that such transactions are undertaken at arm's length remains fundamental to protecting the tax base, while at the same time providing certainty to taxpayers. In this evolving landscape, mechanisms that promote tax certainty while reducing compliance burdens and disputes assume considerable importance.

To address these challenges and promote tax certainty, the Government of India introduced the Safe Harbour Rules under the Income-tax Act, 1961. The recent reforms to the Safe Harbour framework further reaffirm the Government's commitment to promoting tax certainty, reducing transfer pricing disputes, and simplifying compliance. These Rules provide eligible taxpayers with the option of operating within prescribed circumstances in which the transfer price declared by them is accepted by the tax administration, thereby reducing compliance costs, minimizing disputes, and facilitating ease of doing business. Over the years, the Safe Harbour framework has undergone several amendments to align with evolving business practices, international developments, and the changing economic environment.

Given the importance of these provisions for tax professionals, corporates, and other stakeholders, it is essential to have a comprehensive understanding of the legal framework, procedural aspects, eligibility conditions and practical issues relating to the Safe Harbour Rules. In line with this, the Handbook on Safe Harbour Rules has been developed as a practical and up to date reference guide.

I would like to express my sincere appreciation to CA. Satish Kumar Gupta, Chairman, and CA. Vishnu Kumar Agarwal, Vice-Chairman, International Taxation Committee of ICAI, for their initiative and leadership in bringing out this publication.

I am confident that this publication will serve as a valuable resource for our members, tax professionals, industry and other stakeholders by enhancing their understanding of the Safe Harbour Rules and supporting informed professional practice.

CA. Prasanna Kumar D
President, ICAI

Preface

Transfer pricing has become central to international taxation, reflecting the reality of today's globalized economy. The volume and complexity of cross-border transactions between associated enterprises have intensified exponentially, making transfer pricing compliance a critical—and often contentious—area of tax administration.

The core challenge is clear: establishing transfer prices that satisfy the arm's length principle while meeting rigorous documentation standards, all within a regulatory landscape where disputes and prolonged litigation remain commonplace. This imposes substantial compliance burdens on taxpayers and diverts significant resources from core business operations.

To ease this burden and foster greater tax certainty, the Government of India introduced the Safe Harbour Rules under the Income-tax Act, 1961. These Rules offer an elegant solution: eligible taxpayers operating within prescribed circumstances can have their declared transfer prices accepted by the tax administration, substantially reducing compliance costs, minimizing disputes, and providing the certainty that business requires.

The Safe Harbour framework has evolved considerably to reflect changing business models and international developments, making current and comprehensive guidance essential for all practitioners and stakeholders. Recent legislative and administrative changes have further reinforced the need for tax professionals and businesses to remain updated with the latest provisions and their practical application. Recognizing this need, the International Taxation Committee has brought out this Handbook on Safe Harbour Rules as a comprehensive and practical guide for members and other stakeholders.

The Handbook provides a structured analysis of the statutory provisions, procedural requirements, eligibility conditions, documentation aspects and practical issues relating to the Safe Harbour Rules. It also discusses administrative guidance and emerging issues to facilitate a better understanding of the Safe Harbour regime and its implementation.

We extend our sincere gratitude to CA. Prasanna Kumar D, President, ICAI, and CA. Mangesh Pandurang Kinare, Vice-President, ICAI, for their continued guidance and encouragement in furthering the initiatives of the Committee.

We place on record our sincere appreciation to CA. Deven Rajesh Shah for his invaluable contribution to this publication. His extensive expertise, insightful guidance, and valuable inputs have greatly enriched the content and enhanced its practical relevance. His dedication and commitment to excellence have been instrumental in ensuring the quality of this publication. We express our heartfelt gratitude for his significant support and contribution. We are thankful to Mr. S. P. Singh (Ex-IRS) for his review and his valuable inputs.

Our special thanks go to all Committee members: CA. Jay Chhaira, CA. Umesh Ramnarayan Sharma, CA. Vishal Doshi, CA. Sridhar Muppala, CA. Sripriya Kumar, CA. Sanjib Sanghi, CA. Gyan Chandra Misra, CA. (Dr.) Rohit Ruwatia Agarwal, CA. Hans Raj Chugh, CA. Rajesh Sharma, CA. Sanjay Kumar Agarwal, and Justice (Retd.) Shashi Kant Gupta/ Co-Opted Members/ Invitees/ Experts to the committee for their valuable involvement and support.

We acknowledge the efforts of CA. Rohit Kumar, Secretary, International Taxation Committee, CA. Prachi Jain, Project Associate, CA. Manish Goyal, CA Professional, CA. Saloni Sharma, CA Professional, and other members of the Secretariat of the Committee in efficiently coordinating the work and providing essential secretarial assistance.

We are confident that this Handbook will serve as a valuable reference for chartered accountants, tax professionals, corporates, academicians and other stakeholders in understanding and effectively applying the Safe Harbour Rules.

CA. Satish Kumar Gupta
Chairman
International Taxation Committee, ICAI

CA. Vishnu Kumar Agarwal,
Vice Chairman
International Taxation Committee, ICAI

Place: New Delhi
Date: July 2026

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Abbreviations

ALP	Arm’s Length Price
CBDT	Central Board of Direct Taxes
MAP	Mutual Agreement Procedure
CA	Chartered Accountant
R&D	Research and Development
AE	Associated Enterprise
IT	Information Technology
AI	Artificial Intelligence
HR	Human Resource
ITeS	Information Technology Enabled Services
BPO	Business Process Outsourcing
KPO	Knowledge Process Outsourcing
NBFC	Non-Banking Financial Company
LVAIGS	Low value-adding intra-group services
MNE	Multinational Enterprise
OE	Operating Expense
ESOP	Employee Stock Option Plan
D&A	Depreciation and Amortisation
OPM	Operating Profit Margin
OR	Operating Revenue
OEM	Original Equipment Manufacturer
DGIT	Director General of Income Tax
AO	Assessing Officer
TPO	Transfer Pricing Officer
SEBI	Securities and Exchange Board of India
One Year MCLR	Marginal Cost of Funds Lending Rate

Six month Term SOFR	Six month Term Secured Overnight Financing Rate
CME	Chicago Mercantile Exchange
Six month EURIBOR	Six month Euro Inter Bank Offered Rate
Six month Term SONIA	Six month Term Sterling Overnight Index Average
Six month TORF	Six month Tokyo Term Risk Free Rate
Six month BBSW	Six month Bank Bill Swap Rates
Six month SORA	Six month Compounded Singapore Overnight Rate Average
RBI	Reserve Bank of India
IP	Intellectual Property
APA	Advance Pricing Agreement
SHR	Safe Harbour Rules
the 2025 Act	Income-tax Act, 2025
the Rules	Income-tax Rules, 2026

Introduction

The introduction of Safe Harbour Rules (SHR) marked a significant step towards strengthening India's transfer pricing framework by providing greater certainty and reducing the areas of litigation in relation to eligible international transactions. Prior to the introduction of these Rules, determination of the arm's length price frequently involved subjective judgments regarding comparability, selection of transfer pricing methods and economic analysis, leading to prolonged disputes, increased compliance costs and administrative burden for both taxpayers and the tax authorities.

Therefore, vide Finance (No.2) Act, 2009, the CBDT was empowered to formulate SHR i.e. to provide the circumstances in which the Income-tax authorities shall accept the transfer price declared by the assessee. This amendment was brought into effect from 1st April, 2009. However, the SHR were introduced by the Central Board of Direct Taxes vide a notification issued in 2013 only.

Since then, the Safe Harbour regime has undergone several amendments to expand its scope, revise eligibility thresholds and prescribed margins and align the framework with evolving business and economic conditions.

With effect from 1 April 2026, the Income-tax Rules, 2026 (the 2026 Rules) replaced the Income-tax Rules, 1962 (the 1962 Rules) as part of the Government's initiative to simplify and modernise India's direct tax legislation. While the rules have been recast under the new framework, the underlying objectives of the Safe Harbour regime remain unchanged—to provide tax certainty, reduce litigation and facilitate a predictable and efficient transfer pricing environment.

This Handbook presents a comprehensive analysis of the SHR pertaining to international transactions as contained in the 2026 Rules.

Chapter 1
What are Safe Harbour Rules?

Safe Harbour provisions as per section 167 of Income-tax, Act 2025 (the 2025 Act), prescribe the eligible international transactions and the circumstances (i.e. margins, interest rates, guarantee fees) along with prescribed conditions in which transfer price shall be accepted by the tax authorities, without a detailed determination of the ALP.

Objective

To provide certainty to assessees, reduce transfer pricing litigation and ease the compliance burden for both assessees and tax administrators.

Chapter 2

What is the legal framework for Safe Harbour under the new law?

Section 167 of the 2025 Act empowers the Central Board of Direct Taxes (CBDT) to prescribe SHR. This provision replaces section 92CB of the Income-tax Act, 1961 (the 1961 Act).

The Safe Harbour regime has been operationalised through rules 86 to 93 of the 2026 Rules, which has replaced the erstwhile rules 10TA to 10TG of the 1962 Rules.

The key provisions of the SHR are summarised below:

Rule	**Subject**
Rule 86	Definitions
Rule 87	Eligible Assessee
Rule 88	Eligible International Transactions
Rule 89	Circumstances prescribing the applicable margins, interest rates and thresholds
Rule 90	Procedure for exercising the Safe Harbour option (other than IT services)
Rule 91	Procedure for exercising the Safe Harbour option for IT services
Rule 92	Cases in which SHR do not apply
Rule 93	Restriction on invoking the MAP where the Safe Harbour option is accepted

Chapter 3
Definitions (Rule 86)

Rule 86 contains a comprehensive set of definitions that form the foundation of the Safe Harbour regime for various international transactions. These definitions govern the interpretation and application of rules 87 to 93 of the Rules, as captured below:

(a) Accountant

1. Statutory Provision

According to rule 86 for the purposes of that rule and rules 87 to 93 the term 'accountant'-

(i) *means an accountant referred to in section 515(3)(b), who fulfils the following conditions: -*

  (A) *if he is pursuing the profession of accountancy individually or is a valuer then –*

    (I) *he has professional experience of not less than ten years; and*

    (II) *his annual receipt in the year preceding the year in which cost certification is undertaken, from the exercise of profession, exceeds fifty lakh rupees;*

  (B) *if he is a member or partner in any entity engaged in rendering accountancy or valuation services then, the annual receipt of the entity in the year preceding the year in which cost certification is undertaken exceeds three crore rupees;*

(ii) *includes any person recognised for undertaking cost certification by the Government of the country, where the associated enterprise is registered or incorporated or any of its agencies, who fulfils the following conditions: -*

  (A) *the condition referred to in clause (a)(i)(A) and (B); and*

  (B) *if he is a member or partner in any entity engaged in rendering accountancy or valuation services then, the entity or its affiliates have presence in more than two countries.*

2. *Essential Conditions*

Category	Who Qualifies	Threshold
Individual / Valuer	Accountant under section 515(3)(b) of the 2025 Act, practising individually	≥10 years of professional experience and annual receipts > INR 50 lakh in the preceding year
Member / Partner in any entity	Accountant under section 515(3)(b) of the 2025 Act, in an accountancy / valuation entity	Entity's annual receipts > INR 3 crore in the preceding year
Foreign Accountant (overseas AE)	Recognised by the Government of the country of the Associated Enterprise (AE) or its agencies	Must additionally meet the above-mentioned thresholds. In case of an entity or its affiliates, it must have presence in more than two countries.

3. *Illustrations*

- Mr. A is a Chartered Accountant (CA) practising on his own. He has 12 years of experience and has receipts of INR 70 lakh from his practice last year. He qualifies as an "accountant" under this definition.

  However, if he has receipts of INR 30 lakh only, he would not qualify, even if he has more than 10 years of experience.

- ABC & Co., a CA firm, has receipts of INR 5 crore last year. Any eligible partner of this firm can undertake the cost certification.

  However, if the firm's annual receipts were only INR 2 crore, it would not meet this condition.

- A certified public accountant recognized by the Government of Germany (i.e. country of the AE) who has 15 years of experience and has annual receipts more than INR 50 lakh in the year preceding the year in which cost certification is undertaken would qualify as an accountant.

- A certified public accountant (being a partner of an entity) in USA has 15 years of experience and his annual receipts exceed INR 3 crore.

Also, the entity has an international accounting network operating in USA, France and the United Kingdom. He would satisfy this condition.

4. Conclusion

Only an individual or firm satisfying the prescribed eligibility conditions qualifies as an "accountant" for the purposes of cost certification under the SHR. Certification by a non-qualifying professional carries a risk of rejection of the Safe Harbour claim.

(b) Contract Research and Development Services – Software Development

1. Statutory Provision

"Contract research and development services wholly or partly relating to software development" means the following:-

(i) research and development producing new theorems and algorithms in the field of theoretical computer science; or

(ii) development of information technology at the level of operating systems, programming languages, data management, communications software and software development tools; or

(iii) development of internet technology; or

(iv) research into methods of designing, developing, deploying or maintaining software; or

(v) software development that produces advances in generic approaches for capturing, transmitting, storing, retrieving, manipulating or displaying information; or

(vi) experimental development aimed at filling technology knowledge gaps, as may be necessary to develop a software programme or system; or

(vii) research and development on software tools or technologies in specialised areas of computing (image processing, geographic data presentation, character recognition, artificial intelligence and such other areas); or

(viii) upgradation of existing products, where source code has been made available by the principal, except where the source code has been

made available to carry out routine functions like debugging of the software.

2. Essential Conditions

- The services must relate wholly or partly to software development.
- For upgradation (i.e., clause viii) the source code must be made available by the AE.
- Activities must fall within at least one of the eight enumerated sub-clauses.

3. Illustrations

An Indian entity receives source code from its US parent to develop an AI-based image recognition module – a specialised computing area. This constitutes contract research and development (R&D) services under clause (vii).

4. Conclusion

Contract R&D services relating to software development cover only innovation-driven activities — new algorithms, systems-level development (operating systems, programming languages, data management), internet technology, generic advances in information handling, experimental development to fill technology gaps, and specialised areas like AI and image processing. Routine coding, testing and maintenance are excluded only for contract R&D relating to software development activity however, this activity gets qualified under the provision of software development services. Product upgradation qualifies only where the principal shares the source code for enhancement — not for routine functions like debugging.

(c) Core Auto Components

1. Statutory Provision

"core auto components" means —

(i) engine and engine parts, including piston and piston rings, engine valves and parts cooling systems and parts and power train components; or

(ii) transmission and steering parts, including gears, wheels, steering systems, axles and clutches; or

(iii) suspension and braking parts, including brake and brake assemblies, brake linings, shock absorbers and leaf springs; or

(iv) lithium-ion batteries for use in electric or hybrid electric vehicles.

2. Essential Conditions

- The components must fall within one of the four enumerated categories.
- For lithium-ion batteries, they must be specifically for use in electric or hybrid electric vehicles. Components not included in this list are automatically "non-core auto components" under clause (l).

3. Illustrations

- An Indian entity engaged in manufacturing piston rings and supplying to an AE would qualify as core auto components within the meaning of rule 86(c)(i) as piston rings constitute engine parts.
- An Indian entity engaged in manufacturing seat covers and dashboard panels for selling to AE do not fall within any of the four categories – as the products are non-core auto components under clause (l).

4. Conclusion

The SHR prescribe different margins for manufacture / export of core auto components as against non-core auto components. Correct classification at the outset is necessary before applying the relevant margin.

(d) Corporate Guarantee

1. Statutory Provision

"Corporate guarantee" means explicit corporate guarantee extended by a company to its wholly owned subsidiary being a non-resident in respect of any short-term or long-term borrowing, but does not include letter of comfort, implicit corporate guarantee, performance guarantee or any other guarantee of similar nature.

2. Essential Conditions

- The guarantee must be given by a company (not an individual or partnership).
- It must be extended to a wholly owned subsidiary.
- The subsidiary must be a non-resident.

- The guarantee must relate to a borrowing either short-term or long-term.
- It must be explicit in nature and not merely implied or comfort based.

3. Illustrations

- An Indian holding company issues an explicit guarantee letter to a bank in Singapore, guaranteeing repayment of a USD 5 million short term loan taken by its wholly owned Singapore subsidiary. This is a "corporate guarantee" under rule 86(d).
- An Indian holding company sends a letter to the Singapore bank stating that it 'supports' its wholly owned subsidiary and will 'endeavour to ensure' repayment of a loan. This is a letter of comfort expressly excluded from the definition.

4. Conclusion

An assessee having eligible international transaction relating to explicit corporate guarantee and meeting all the prescribed conditions can avail the Safe Harbour benefit. Other guarantees, including implicit guarantees and letter of comfort, fall outside the Safe Harbour regime and must be evaluated under the regular transfer pricing provisions.

(e) Data Centre

1. Statutory Provision

"Data centre" means a dedicated secure space within a building or centralised location, where computing and networking equipment is concentrated for the purpose of collecting, storing, processing, distributing or allowing access to large amounts of data.

2. Essential Conditions

- Must be a dedicated and secure space – the space which is exclusively earmarked for this purpose.
- Located within a building or a centralised location – the facility need not be a standalone building but could be a designated, centralised portion within a larger premises.

- Concentration of computing and networking equipment at that space - The purpose of such equipment should be for collecting, storing, processing, distributing or allowing access to large amounts of data.

3. Illustrations

- A dedicated facility in Mumbai having hundreds of servers with power supply, cooling and security, operated to process and distribute data for an overseas AE qualifies as a 'data centre'.
- A small server closet in a regular office building handling routine internal emails and files for a single company does not meet the condition of providing access to 'large amounts of data' and having 'dedicated secure space' criteria.

4. Conclusion

An ordinary internal IT server room does not qualify. This definition targets facilities engaged in data centre business on a commercial / scaled basis – e.g., co-location, hosting or cloud infrastructure services rendered.

(f) Data Centre Services

1. Statutory Provision

"Data centre services" means the services provided by a data centre through the use of physical infrastructure including land, buildings, mechanical electrical power equipment, cooling system, security and information technology infrastructure including servers, computers, storage systems, operating systems, security solutions, network and associated software platforms, networking and other equipment and human resource in India.

2. Essential Conditions

- The services must be provided by a data centre [as defined in clause (e)] i.e., the dedicated, secure, concentrated facility mentioned earlier must be the source of such services.
- The services must be rendered through the use of physical infrastructure, which would include:
  - land and buildings (the physical premises housing the facility);
  - mechanical and electrical power equipment (e.g., power backup, UPS systems, generators);

  - cooling systems (necessary for maintaining the equipment at operating temperatures);
  - security infrastructure (physical and surveillance security at the facility).
- The services must also involve the use of IT infrastructure, including servers, computers, storage and operating systems, security solutions (cyber / IT security, as distinct from physical security), network and associated software platforms, networking and other related equipment.
- The services must be rendered with the use of human resource (HR). The physical infrastructure as well as IT infrastructure should be located in India.

3. Illustrations

- An Indian data centre providing co-location, managed hosting and disaster recovery services to a US AE, using its owned servers, cooling systems and IT staff qualifies as an entity providing 'data centre services'.
- An Indian IT company providing cloud advisory services to an AE without owning or operating any physical server / data infrastructure does not qualify as an entity providing data centre services.

4. Conclusion

This definition identifies the eligible international transactions for which a specific Safe Harbour margin is prescribed for the data centre services sector. It is pertinent to note that services provided by a data centre to its overseas AE through use of physical and IT infrastructure in India would qualify under this clause.

(g) Generic Pharmaceutical Drug

1. Statutory Provision

"Generic pharmaceutical drug" means a drug that is comparable to a drug already approved by the regulatory authority in dosage form, strength, route of administration, quality and performance characteristics and intended use.

2. Essential Conditions

- There must be a drug already approved by the regulatory authority – i.e., a comparable drug must pre-exist and have received regulatory approval.
- The drug in question must be comparable to such already approved drug – comparability, rather than identicality, is the test prescribed. Such comparability must specifically extend to the following parameters: -
  - Dosage form (e.g., tablet, capsule, injection, syrup)
  - Strength (i.e., the concentration / potency of the active ingredient)
  - Route of administration (e.g., oral, intravenous, topical)
  - Quality (i.e., manufacturing and compositional standards)
  - Performance characteristics (e.g., bio-equivalence, therapeutic effect)
  - Intended use (i.e., the medical purpose / indication for which the drug is meant to be administered).

The list of parameters is exhaustive – all the six comparability parameters mentioned above must be met.

3. Illustrations

- An Indian pharma entity manufactures a 500mg paracetamol tablet and meets all the comparability criteria of an already approved drug by the regulatory authority – this qualifies as a 'generic pharmaceutical drug'.
- An Indian pharma entity manufactures a 650mg extended-release paracetamol tablet, whereas the comparable drug approved by the regulatory authority is a 500mg immediate-release tablet – this does not qualify as a 'generic pharmaceutical drug' due to differences in strength and dosage form.

4. Conclusion

Drugs satisfying this definition fall within the scope of Contract R&D services relating to generic pharmaceutical drugs, for which a distinct Safe Harbour margin is prescribed.

(h) Information Technology Enabled Services (ITeS)

1. Statutory Provision

"Information technology enabled services" means any of the following business process outsourcing services provided mainly with the assistance or use of information technology:-

(i) back-office operations; or

(ii) call centres or contact centre services; or

(iii) data processing and data mining; or

(iv) insurance claim processing; or

(v) legal databases; or

(vi) creation and maintenance of medical transcription excluding medical advice; or

(vii) translation services; or

(viii) payroll; or

(ix) remote maintenance or recovery; or

(x) revenue accounting; or

(xi) support centres; or

(xii) website services; or

(xiii) data search integration and analysis; or

(xiv) remote education excluding education content development; or

(xv) clinical database management services excluding clinical trials,

but does not include any research and development services whether or not in the nature of Contract Research and Development services.

2. Essential Conditions

- Must be a Business Process Outsourcing (BPO) service.
- Must be provided with the assistance or use of IT.
- Must fall within one of the fifteen enumerated categories.
- Must not involve R&D services of any kind.

3. Illustrations

- An Indian BPO which processes insurance claims for a US-based AE insurer using IT-enabled workflows –qualifies as ITeS under clause (iv).
- An Indian entity which conducts R&D for an overseas AE is specifically excluded from ITeS and from the Safe Harbour framework for ITeS.

4. Conclusion

Indian entities performing higher-end analytical or knowledge-intensive work must therefore carefully test whether their functions remain IT-enabled processing or have crossed into R&D, which falls outside the purview of SHR.

(i) Intra-Group Loan

1. Statutory Provision

"Intra-group loan" means loan advanced to an associated enterprise being a non-resident, where the loan –

(i) is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing in the normal course of business; and

(ii) does not include credit line or any other loan facility which has no fixed term for repayment.

2. Essential Conditions

- Must be a loan (not equity, guarantee or other instrument).
- Must be advanced to an AE that is a non-resident.
- The lender must NOT be a financial company, bank, financial institution or enterprise ordinarily engaged in lending / borrowing activities.
- Must have a fixed repayment term.

3. Illustrations

- An Indian manufacturing company lends USD 2 million to its wholly owned US subsidiary for 3 years at a fixed interest rate. The Indian company is not in the business of lending. This is an 'intra-group loan' under rule 86(i).

- An Indian non-banking financial company (NBFC) advances funds to its overseas subsidiary as part of its regular lending business – this does not constitute an 'intra-group loan', since the loan is advanced by an enterprise engaged in lending in the normal course of business.

4. Conclusion

The Safe Harbour rate is determined by the currency of the loan and the applicable base rate – correct identification of an 'intra-group loan' is a prerequisite. The definition excludes loans advanced by banks, NBFCs and other enterprises engaged in ordinary financing activities.

(j) Knowledge Process Outsourcing Services

1. Statutory Provision

"Knowledge process outsourcing services" means any of the following business process outsourcing services provided mainly with the assistance or use of information technology requiring application of knowledge and advanced analytical and technical skills:-

(i) geographic information system; or

(ii) human resources services; or

(iii) engineering and design services; or

(iv) animation or content development and management; or

(v) business analytics; or

(vi) financial analytics; or

(vii) market research,

but does not include any research and development services, whether or not in the nature of contract research and development services.

2. Essential Conditions

- Must be a BPO service delivered mainly with the assistance or use of IT requiring application of knowledge and advanced analytical / technical skills – this is the key qualifying element that elevates a service from routine ITeS to KPO, reflecting a higher degree of domain expertise, judgment and specialised skill in performing the outsourced function.

- Must fall within one of the seven enumerated categories.
- Must not constitute R&D services of any kind.

3. Illustrations

- An Indian firm provides financial analytics services to a US AE, analysing market data and preparing investment-grade research reports – this qualifies as KPO under clause (vi).
- An Indian entity develops a new drug compound database through original research for an overseas AE – this constitutes R&D services, expressly excluded from KPO.

4. Conclusion

Although KPO services involve specialised knowledge and a higher degree of value addition than routine ITeS, the Rules do not prescribe a separate Safe Harbour margin for KPO services. Both KPO and ITeS are covered within the broader category of "IT services" and are subject to the prescribed Safe Harbour conditions applicable to such services.

(k) Low Value Adding Intra-Group Services (LVAIGS)

1. Statutory Provision

"Low value-adding intra-group services" means services that are performed by one or more members of a multinational enterprise group on behalf of one or more other members of the same multinational enterprise group and which–

(i) are in the nature of support services;

(ii) are not part of the core business of the multinational enterprise group, that is, such services neither constitute the profit-earning activities nor contribute to the economically significant activities of the multinational enterprise group;

(iii) are not in the nature of shareholder services or duplicate services;

(iv) neither require the use of unique and valuable intangibles nor lead to the creation of unique and valuable intangibles;

(v) neither involve the assumption or control of significant risk by the service provider nor give rise to the creation of significant risk for the service provider; and

(vi) do not have reliable external comparable services that can be used for determining their arm's length price,

but does not include the following services: -

(A) research and development services;

(B) manufacturing and production services;

(C) information technology (software development) services;

(D) knowledge process out-sourcing services;

(E) business process outsourcing services;

(F) purchasing activities of raw materials or other materials that are used in the manufacturing or production process;

(G) sales, marketing and distribution activities;

(H) financial transactions;

(I) extraction, exploration, or processing of natural resources; and

(J) insurance and reinsurance.

2. Essential Conditions

- Must be performed by one or more members of the multinational Enterprise (MNE) on behalf of one or more members of the same MNE group (intra-group).
- Must be support services – not core or profit-driven.
- Must satisfy all six positive conditions specified in sub-clauses (i) to (vi) of rule 86(k) cumulatively.
- Must not fall within any of the ten excluded categories specified in clauses (A) to (J) of rule 86(k).

3. Illustrations

- An Indian group entity provides HR coordination, legal compliance monitoring and IT helpdesk (basic) services to its subsidiaries – these are support services, not core to group's business – qualify as LVAIGS.
- An Indian entity provides software development services to its Singapore AE – this is expressly excluded under rule 86(k) (C). Cannot be treated as LVAIGS.

4. Conclusion

The classification of a service as LVAIGS is fundamental to the application of the simplified Safe Harbour regime. It should be noted that all six conditions must be satisfied cumulatively.

(I) Non-core Auto Components

1. Statutory Provision

"Non-core auto components" means auto components other than core auto components.

2. Essential Conditions

- Must be an auto component.
- Must not fall within any of the four categories of 'core auto components' defined under clause (c) of Rule 86.

3. Illustrations

- An Indian manufacturer supplies seat covers, dashboard trims, floor mats and audio systems to an overseas AE – these components do not fall within the definition of 'core auto components' under clause (c) of Rule 86 and accordingly, qualify as 'non-core auto components'.
- An Indian manufacturer supplies piston rings, axles and shock absorbers to an overseas AE – these components fall within the definition of 'core auto components' under clause (c) of rule 86 and accordingly, do not qualify as 'non-core auto components'.

4. Conclusion

This bifurcation is relevant because the SHR prescribe different Safe Harbour operating margins for the manufacture and export of core auto components as against non-core auto components, reflecting the different value-addition and risk profile typically associated with each category. An assessee must, therefore, first correctly classify the relevant auto components as "core" or "non-core" before applying the corresponding Safe Harbour margin.

(m) No tax or low tax country or territory

1. *Statutory Provision*

"No tax or low tax country or territory" means a country or territory in which the maximum rate of income-tax is less than 15 per cent.

2. *Essential Conditions*

- Must be a country or territory.
- The maximum rate of income-tax applicable in that country / territory is less than 15 per cent.
- The 15 per cent threshold is an absolute benchmark – it does not depend on the effective rate applicable to a particular assessee.

3. *Illustrations*

- A jurisdiction with a maximum corporate income-tax rate of 9 per cent – qualifies as a 'no tax or low tax country or territory'.
- A country with a maximum statutory corporate tax rate of 20 per cent but offering incentives that bring the effective rate to 5 per cent for certain entities – does not qualify as the maximum rate (20 per cent) exceeds the threshold of 15 per cent.

4. *Conclusion*

This definition helps to identify whether an AE is in a “no tax or low tax” jurisdiction for the purposes of SHR. Thus, the assessee before making an application for obtaining Safe Harbour protection under the Safe Harbour regime must evaluate whether the AE is located in a notified jurisdiction under section 176 of the 2025 Act or is located in a “no tax or a low tax” jurisdiction.

(n) Operating Expense (OE)

1. *Statutory Provision*

"Operating expense" means –

(i) the costs incurred in the tax year by the assessee in relation to the international transaction during the course of its normal operations including costs relating to Employee Stock Option Plan or similar stock-

based compensation provided for by the associated enterprises of the assessee to the employees of the assessee;

(ii) reimbursement to associated enterprises of expenses incurred by the associated enterprises on behalf of the assessee at cost;

(iii) amounts recovered from associated enterprises on account of expenses incurred by the assessee on behalf of those associated enterprises and which relate to normal operations of the assessee at cost; and

(iv) depreciation and amortisation expenses relating to the assets used by the assessee,

but does not include –

(A) interest expense;

(B) provision for unascertained liabilities;

(C) pre-operating expenses;

(D) loss arising on account of foreign currency fluctuations;

(E) extraordinary expenses;

(F) loss on transfer of assets or investments other than assets on which depreciation is included in the operating expense;

(G) expense on account of income-tax; and

(H) other expenses not relating to normal operations of the assessee.

2. Essential Conditions

- Must be incurred in the relevant tax year.
- Must relate to the international transaction and should arise during the normal course of operations.
- Employee Stock Option Plan (ESOP) / stock-based compensation provided by AEs to the employees of the assessee is included.
- At-cost reimbursements in both directions are covered, subject to the condition that recoveries from AEs must relate to the normal operations of the assessee.

- Must not include interest expense, provision for unascertained liabilities, pre-operating expenses, loss arising on account of foreign currency fluctuations, extraordinary expenses, loss on transfer of assets or investments other than assets, on which depreciation is included in the OE, expense on account of income-tax and other expenses not relating to normal operations of the assessee.
- Depreciation and amortisation (D&A) expenses are included only to the extent that they relate to assets used by the assessee.

3. Illustrations

- Salary costs, rent and depreciation on office equipment used by the Indian entity in rendering IT services to its AE – all qualify as OE.
- INR 50 lakh foreign exchange loss arising on account of USD / INR movement on an AE receivable – expressly excluded under clause (D) of rule 86(n).

4. Conclusion

OE forms the denominator for computing the operating profit margin (OPM) [defined separately under rule 86(p)], which is the key metric against which the prescribed Safe Harbour margins are compared for most categories of eligible international transactions.

(o) Operating Revenue (OR)

1. Statutory Provision

"Operating revenue" means the revenue earned by the assessee in the tax year in relation to the international transaction during the course of its normal operations including costs relating to Employee Stock Option Plan or similar stock-based compensation provided for by the associated enterprises of the assessee to the employees of the assessee, but does not include -

(i) interest income;

(ii) income arising on account of foreign currency fluctuations;

(iii) income on transfer of assets or investments other than assets, on which depreciation is included in the operating expense;

(iv) refunds relating to income-tax;

(v) provisions written back;

(vi) *extraordinary incomes; and*

(vii) *other incomes not relating to normal operations of the assessee.*

2. *Essential Conditions*

- Must be earned in the relevant tax year.
- Must relate to the international transaction.
- Must arise during the course of normal operations.
- Must not include interest income, income arising on account of foreign currency fluctuations, income on transfer of assets or investments other than assets, on which depreciation is included in the OE, refunds relating to income-tax, provisions written back, extraordinary incomes and other incomes not relating to normal operations of the assessee.
- ESOP / stock-based compensation provided by AEs to the employees of the assessee is included.

3. *Illustrations*

- Service fee received from a US AE for IT services rendered in the tax year qualifies as OR.
- A provision of INR 20 lakh written back during the year because the underlying liability did not materialise – is excluded as 'provisions written back' under clause (v).

4. *Conclusion*

OR is the numerator component in computing operating profit (OR minus OE) and together with OE, determines the OPM. Inclusion of non-operating items could artificially inflate the OPM and lead to an incorrect Safe Harbour claim. The mirror-image exclusions from OR and OE ensure consistent and symmetrical determination of the OPM. Also, the inclusion of ESOP/stock-based compensation in OR reflects the position that amounts recovered from AEs on account of ESOP costs borne by the Indian entity are treated as operating revenue for the purposes of the OPM computation.

(p) Operating Profit Margin

1. Statutory Provision

"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 percentage.

2. Essential Conditions / Formula

Symbolically: OPM (%) = [(OR – OE) ÷ OE] × 100.

- Numerator: Operating Profit = OR minus OE (as defined in sub-rules (o) and (n) of rule 86 respectively).
- Denominator: OE [as defined in clause (n) of Rule 86].
- Expressed as a percentage.
- Both OR and OE must be computed after applying the definitions in sub-rules (o) and (n) of rule 86 respectively.

3. Illustrations

OR: INR 1,00,00,000 | OE: INR 80,00,000 | Operating Profit: INR 20,00,000 | OPM = 20,00,000 / 80,00,000 × 100 = 25 per cent.

4. Conclusion

This is the key benchmarking metric under the SHR for most categories of services (ITeS, KPO, contract R&D for software / generic pharma, etc.). An assessees actual OPM (computed as per this formula) must meet or exceed the prescribed Safe Harbour percentage for the relevant category to avail Safe Harbour benefit.

(q) Tax Year

1. Statutory Provision

"Relevant tax year" means the tax year for which the option for safe harbour is validly exercised.

2. Essential Conditions

- Must be a tax year (as defined under section 3 of the 2025 Act).
- The assessee must have validly exercised the option for Safe Harbour for that tax year.

- The option must be exercised in the prescribed manner and within the prescribed time.

3. Illustrations

An assessee files Form No. 49 for tax year 2026-27 before the prescribed due date – here 2026-27 is the 'relevant tax year'.

4. Conclusion

This definition specifies the applicability period of the Safe Harbour option, as the rights, conditions and consequences under the Rules (such as the requirement to continue with Safe Harbour for a specified number of years once opted or restrictions on switching back to regular transfer pricing scrutiny) are tested with reference to the "relevant tax year(s)" for which the option has been validly exercised.

(r) Software Development Services

1. Statutory Provision

"Software development services" mean –

(i) business application software and information system development using known methods and existing software tools; or

(ii) ancillary or support services for existing systems; or

(iii) converting or translating computer languages; or

(iv) adding user functionality to application programmes; or

(v) debugging of systems; or

(vi) adaptation of existing software; or

(vii) preparation of user documentation;

but does not include any research and development services whether or not in the nature of contract research and development services.

2. Essential Conditions

- Must involve software-related work.
- Must fall within one of the seven enumerated activities.
- Must not constitute R&D services.

3. *Illustrations*

- An Indian entity develops a customer relationship management application for its US AE using Java and existing frameworks, adds new user interface features and prepares user manuals – all these activities under clauses (i), (iv), and (vii) of Rule 86(r) – qualify as software development services.
- An Indian entity undertakes R&D on a machine learning algorithm for image recognition for its AE – the activity falls within R&D on software technologies in specialised areas of computing, namely image processing and AI, under rule 86(b)(vii) and not rule 86(r) as the provision of software development services activity does not include any sort of research and development.

4. *Conclusion*

It is important to note that the definition does not extend to any R&D services, whether or not in the nature of contract R&D services.

Chapter 4

Who is an "Eligible Assessee" under Rule 87?

Rule 87 prescribes the categories of persons who qualify as an "eligible assessee" for the purposes of availing the Safe Harbour provisions in respect of eligible international transactions. Eligibility is contingent upon the valid exercise of the Safe Harbour option and, in specified cases, satisfaction of the "insignificant risk" conditions prescribed in sub-rules (2) and (3) of rule 87. The various categories of eligible assessee covered under Rule 87 are discussed hereunder.

Rule 87(1) – Basic Eligibility Condition: Valid Exercise of Option

1. Statutory Provision

Subject to the provisions of sub-rules (2) and (3), the "eligible assessee" means a person who has exercised a valid option for application of Safe Harbour Rules in accordance with rule 90, and –

(a) is engaged in providing information technology services consisting of any one or more of the following: -

(i) software development services; or

(ii) information technology enabled services; or

(iii) knowledge process outsourcing services; or

(iv) contract research and development services wholly or partly relating to software development,

with insignificant risk, to a non-resident associated enterprise (hereinafter referred to as foreign principal); or

(b) has made any intra-group loan; or

(c) has provided a corporate guarantee; or

(d) *is engaged in providing contract research and development services wholly or partly relating to generic pharmaceutical drugs, with insignificant risk, to a foreign principal; or*

(e) *is engaged in the manufacture and export of core or non-core auto components and where 90% or more of total turnover during the relevant tax year is in the nature of original equipment manufacturer sales; or*

(f) *is in receipt of low value-adding intra-group services from one or more members of its group; or*

(g) *has provided data centre services to a foreign company.*

2. Analysis

Rule 87(1) prescribes the categories of persons who can avail the Safe Harbour regime. Eligibility is subject to rule 87(2) and rule 87(3):

- *Procedural condition:* The assessee must exercise a valid option for the application of the SHR in accordance with rule 90 or rule 91, as the case may be.
- *Substantive condition:* The assessee must fall within one of the categories specified in rule 87(1)(a) to (g).

Particular attention should be paid to rule 87(1)(e), which applies to manufacturers and exporters of core or non-core auto components. Eligibility under this category is subject to a strict threshold requirement that at least 90 per cent of assessees total turnover during the relevant tax year must comprise of original equipment manufacturer (OEM) sales. Failure to satisfy this threshold would render the assessee ineligible to avail the Safe Harbour regime under this category, irrespective of the nature of the underlying transactions.

Merely undertaking an eligible international transaction does not, by itself, entitle the assessee to the benefits of the Safe Harbour regime. The assessee must first exercise a valid option in the prescribed manner under rule 90 or rule 91[1] coupled with having a prescribed specified margin as per rule 89 for the eligible international transactions (rule 88).

[1] Rule 87 refers to only rule 90. However, from a completeness perspective, we have added rule 91 as well.

3. Illustration

- An Indian captive software entity satisfies the insignificant-risk conditions under sub-rule (2) on facts but fails to file Form No. 49 within the specified time prescribed under rule 91. It cannot claim Safe Harbour benefit for that tax year, notwithstanding factual eligibility.
- An Indian entity is providing LVAIGS to its AEs located outside India. In this regard, it is to be noted that the Indian entity is not eligible for the Safe Harbour regime as it is providing and not availing low value-added intra-group services.

4. Conclusion

The status of an "eligible assessee" is determined through a two-step test, namely:

- procedural compliance through a valid exercise of the Safe Harbour option; and
- substantive qualification under one of the categories specified in rule 87(1).

Failure to satisfy either requirement disentitles the assessee from availing the Safe Harbour regime benefit.

Rule 87(2) – Insignificant Risk Test for sub-rule (1)(a) [IT Services]

1. Statutory Provision

For the purposes of identifying an eligible assessee, with insignificant risk, referred to in sub-rule (1)(a), the Director General of Income-tax (Systems) shall have regard to the following factors: -

(a) the foreign principal performs most of the economically significant functions involved, including the critical functions, such as,-

(i) conceptualisation;

(ii) design of the product; and

(iii) 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;

(b) the capital and funds and other economically significant assets including the intangibles required, are provided by the foreign principal or its other associated enterprises and the eligible assessee is only provided a remuneration for the work carried out by it;

(c) the eligible assessee works under the direct supervision of the foreign principal or its associated enterprise which not only has the capability to control or supervise but also actually controls or supervises research or product development or the activities carried out through its strategic decisions to perform core functions as well as by monitoring activities on a regular basis;

(d) the eligible assessee does not assume or has no economically significant realised 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;

(e) 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 or on the outcome of the research, which vests with the foreign principal as evident from the contract and the conduct of the parties.

2. Analysis

Rule 87(2) lays down the criteria for determining whether an eligible assessee engaged in providing IT services can be regarded as operating with *insignificant risk* for the purposes of Safe Harbour eligibility. The provision is intended to confine the benefit of the Safe Harbour regime to *low-risk captive service providers* and therefore requires an examination of the actual conduct of the international transaction rather than merely its contractual form.

The factors prescribed under the rule indicate that an assessee will ordinarily be regarded as operating with insignificant risk where:

- the key entrepreneurial and strategic functions are performed by the AE;

- the AE bears the investment and funding requirements and owns the economically significant assets and intangibles and the assessee is merely remunerated for the services performed;
- the assessee performs routine execution functions under the supervision and control of the AE;
- the assessee does not bear significant market, product, technology, credit or other entrepreneurial risks; and
- any IP or research outcome generated during the course of rendering services belong to the AE.

It is important to evaluate and identify the economically significant functions (i.e. key business activities that creates value) and economically significant assets (i.e. key assets employed that add value to the business).

3. Substance Over Form – Rule 87(2)(d)

In particular, rule 87(2)(d) incorporates the "substance over form" principle by expressly providing that contractual allocation of risks is not determinative where the actual conduct of the parties indicates otherwise. Thus, even if the agreement states that the AE bears risks, the assessee may fail the insignificant risk test if, in substance, it exercises control over risks or performs entrepreneurial functions.

4. Illustration

- An Indian captive software development company is engaged in rendering services relating to providing software coding, testing and maintenance services exclusively to its foreign parent company. The foreign parent conceptualises and designs the software products, owns all the IP rights, provides the necessary funding and determines the project specifications and timelines. The Indian entity performs the services under the direct supervision of the foreign parent and is remunerated on a cost-plus basis. It does not bear market risk, product liability risk, technology risk or ownership risk in any intangibles developed during the course of rendering services.

  In such a case, the assessee would satisfy the insignificant risk conditions prescribed under rule 87(2).
- Conversely, if the Indian entity independently develops software products, makes strategic decisions regarding product development,

bears technology and market risks, or acquires ownership rights in the resulting IP, it will fail the insignificant risk test under rule 87(2), notwithstanding any contractual provision stating that such risks are borne by the foreign principal.

5. Conclusion

In essence, rule 87(2) seeks to ensure that the Safe Harbour regime is available only to captive, routine service providers who:

- perform limited, non-strategic functions;
- use assets and intangibles provided by the AE;
- do not assume economically significant risk;
- work under actual control or supervision of AE (through AE's strategic decisions);
- has no ownership right, legal or economic on any intangibles generated.

Rule 87(3) – Insignificant Risk Test for Generic Pharmaceutical Contract R&D Service Providers under Rule 87(1)(d)

1. Statutory Provision

For the purpose of identifying an eligible assessee, with insignificant risk, referred to in sub-rule (1)(d), the Director General of Income-tax (Systems) or the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the following factors: -

(a) the foreign principal performs most of the economically significant functions involved in research or product development cycle, including the critical functions such as;

(i) conceptualisation;

(ii) design of the product; and

(iii) 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;

(b) the foreign principal or its other associated enterprises provides, –

(i) the funds or capital;

(ii) other economically significant assets including intangibles required for research or product development; and

(iii) a remuneration to the eligible assessee for the work carried out by it;

(c) the eligible assessee works under the direct supervision of the foreign principal or its other 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;

(d) the eligible assessee does not assume or has no economically significant realised 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;

(e) the eligible assessee has no ownership right, legal or economic, on the outcome of the research which vests with the foreign principal and which is evident from the contract as well as the conduct of the parties.

2. Analysis

Rule 87(3) mirrors the insignificant risk test prescribed under rule 87(2). The provision is intended to ensure that the Safe Harbour regime is confined to low-risk captive generic pharmaceutical contract R&D service providers who undertake routine research functions on behalf of the AE.

The factors prescribed under rule 87(3) indicate that an assessee will ordinarily be regarded as operating with insignificant risk where:

- the AE performs the economically significant and strategic functions relating to the research or product development cycle;
- the AE provides the funding, capital and economically significant assets, including intangibles;
- the assessee performs routine research activities under the direct supervision and control of the AE who not only monitors on regular

basis but also controls or supervises the assessee through its strategic decisions;

- the assessee does not bear economically significant market, product, technology or other entrepreneurial risks in actual conduct; and
- the legal or economic ownership of the research outcome vests exclusively with the AE.

3. Distinguishing Features vis-à-vis Rule 87(2)

(a) Plurality of Assessing Authorities

Unlike rule 87(2), which refers only to the Director General of Income Tax (DGIT) (Systems), rule 87(3) expressly empowers the DGIT (Systems), the Assessing Officer (AO) and the Transfer Pricing Officer (TPO) to examine whether the insignificant risk condition has been satisfied.

Consequently, the determination may arise during assessment or transfer pricing proceedings, potentially resulting in greater factual scrutiny and a higher likelihood of disputes concerning the satisfaction of the insignificant risk requirement.

(b) Narrower Ownership Test

Rule 87(3)(e) refers specifically to the "outcome of the research", whereas rule 87(2)(e) employs broader language covering "any intangible generated or the outcome of any intangible generated".

Accordingly, the pharmaceutical contract R&D provision focuses specifically on ownership of research outcome, rather than extending to all intangibles that may be generated in the course of rendering services.

4. Substance Over Form – Rule 87(3)(d)

Rule 87(3)(d) incorporates the substance over form principle by providing that the actual conduct of the parties takes precedence over the contractual allocation of risks.

Accordingly, even where the contractual arrangements state that the AE bears the risks, the assessee may fail the insignificant risk test if, in substance, it exercises control over the research activities or assumes economically significant risks.

5. Illustration

- An Indian entity is engaged in providing contract R&D services relating to generic pharmaceutical drugs for its AE. The AE performs the conceptualization function and provides strategic direction and framework to the assessee and funds the Indian activity, supervises the research activities and retains ownership of all research data, regulatory filings and resulting IP. The Indian assessee merely performs the assigned activities and bears no significant risks in actual conduct.

  In such a case, the assessee would satisfy the insignificant risk conditions prescribed under rule 87(3).

- An Indian CRO undertakes research activities for its AE but independently controls the research programme, bears the costs of failed trials and retains economic rights in the resulting IP. Notwithstanding any contractual provision to the contrary, the assessee would fail the insignificant-risk conditions under rule 87(3) and would not be eligible for Safe Harbour benefit.

6. Conclusion

Rule 87(3) is intended to confine the Safe Harbour benefit to low-risk captive generic pharmaceutical contract R&D service providers who undertake routine research functions on behalf of a foreign principal without assuming significant risks or owning the research outcomes.

Further, rule 87 prescribes who qualifies as an "eligible assessee" for the purposes of claiming Safe Harbour benefit in respect of eligible international transactions. Qualification is founded upon a two-part test: (i) the assessee must have validly exercised the Safe Harbour option under rule 90 and (ii) the assessee must fall within one of the specified categories under rule 87(1). For assessees engaged in providing IT services and generic pharmaceutical drug relating to contract R&D services, the legislation imposes an additional requirement that the assessee should operate with "insignificant risk", which sub-rules (2) and (3) define through a substance-based analysis of the functions performed, assets employed and risks assumed.

Accordingly, rule 87 seeks to ensure that the benefits of the Safe Harbour regime are confined to assessees who satisfy clearly defined eligibility criteria and, where applicable, operate as low-risk captive service providers.

Insignificant Risk is Critical

The concept of insignificant risk is fundamental to determining eligibility under the Safe Harbour regime. An entity that assumes significant entrepreneurial, market or credit risk may not qualify as an eligible assessee, even if it satisfies the prescribed margins or other quantitative thresholds.

Accordingly, assessees must evaluate not only the financial benchmarks but also their functional and risk profile before opting for the Safe Harbour regime.

Chapter 5

Which International Transactions are eligible under Rule 88?

While rule 87 prescribes the categories of assessees who may avail the Safe Harbour regime, rule 88 identifies the specific international transactions in respect of which Safe Harbour benefits may be claimed. The two provisions operate together and must be satisfied cumulatively. Only international transactions falling within the exhaustive list prescribed under rule 88 can opt for the Safe Harbour regime having the prescribed margins or rates under rule 89.

1. Statutory Provision

An "eligible international transaction" means an international transaction between the eligible assessee and its associated enterprise, one of which is necessarily a non-resident and which comprises of –

(a) provision of information technology services consisting of any one or more of the following:-

(i) provision of software development services; or

(ii) provision of information technology enabled services; or

(iii) provision of knowledge process outsourcing services; or

(iv) provision of contract research and development services wholly or partly relating to software development; or

(b) advance of intra-group loan; or

(c) provision of corporate guarantee, where the amount guaranteed, –

(i) does not exceed one hundred crore rupees; or

(ii) exceeds one hundred crore rupees and the credit rating of the associated enterprise, done by an agency registered with the Securities and Exchange Board of India, is of the adequate to highest safety; or

(d) provision of contract research and development services, wholly or partly, relating to generic pharmaceutical drugs; or

(e) manufacture and export of core auto components; or

(f) manufacture and export of non-core auto components; or

(g) receipt of low value-adding intra-group services from one or more members of its group; or

(h) provision of the data centre services.

2. Essential Conditions

For a transaction to qualify as an eligible international transaction, the following conditions must be cumulatively satisfied:

- the transaction must constitute an international transaction under section 163 of the 2025 Act;
- the transaction must be entered into between an eligible assessee and its AE;
- one of the parties to the transaction must necessarily be a non-resident; and
- the transaction must fall within one of the categories specifically enumerated in sub-rules (a) to (h) of rule 88.

Accordingly, merely constituting an international transaction does not, by itself, bring a transaction within the Safe Harbour regime. The transaction must fall within one of the prescribed categories and satisfy the applicable conditions and thresholds.

3. Analysis

Rule 88 adopts a transaction-specific approach to Safe Harbour eligibility. Even where an assessee qualifies as an eligible assessee under rule 87, Safe Harbour benefits are available only in respect of those international transactions that are specifically enumerated in sub-rules (a) to (h) of rule 88. The provision therefore operates as a statutory filter, restricting the application of the Safe Harbour regime to a closed and exhaustively defined class of international transactions.

Certain categories of transactions are subject to additional eligibility requirements. For example:

- *Corporate guarantees* are subject to monetary and creditworthiness thresholds. Guarantees not exceeding INR 100 crore automatically qualify, whereas guarantees exceeding INR 100 crore qualify only if the AE possesses a credit rating ranging from "adequate safety" to "highest safety" assigned by a Securities and Exchange Board of India (SEBI) registered credit rating agency.
- *Manufacture and export of auto components* are treated as separate transaction categories for core and non-core auto components. However, the assessee must additionally satisfy the eligibility conditions under rule 87(1)(e), including the requirement that at least 90 per cent of its total turnover during the relevant tax year consists of OEM sales.

The categories prescribed under rule 88 are exhaustive and nothing beyond that would be eligible for Safe Harbour regime.

4. Illustration

- An Indian captive software development company provides software development services exclusively to its AE and satisfies the conditions prescribed under rule 87. The transaction constitutes an eligible international transaction under rule 88(a)(i).
- An Indian company extends a corporate guarantee of INR 80 crore in favour of its foreign subsidiary. Subject to satisfaction of the other Safe Harbour conditions, the transaction would qualify as an eligible international transaction under rule 88(c)(i).

Conversely, where an Indian company provides a corporate guarantee of INR 150 crore in favour of its foreign subsidiary, which does not possess the prescribed credit rating from a SEBI-registered credit rating agency, the transaction would not qualify as an eligible international transaction under rule 88(c)(ii), notwithstanding that it constitutes an international transaction under the 2025 Act.

5. Conclusion

Rule 88 serves as the transactional gateway to the Safe Harbour regime by prescribing a list of international transactions that are eligible for Safe Harbour regime. The provision must be read in conjunction with rule 87, since the Safe Harbour benefit becomes available only where there exists both:

- an eligible assessee under rule 87; and
- an eligible international transaction under rule 88.

On the other hand, where either the assessee fails to qualify as an eligible assessee or the transaction falls outside the categories specified in rule 88, the Safe Harbour provisions would be inapplicable.

Chapter 6

What are the circumstances (margins and rates) prescribed under Rule 89?

Rule 89 prescribes the minimum profit margins, interest rates, commission rate and other conditions that an eligible assessee must fulfil in respect of an eligible international transaction for the declared transfer price to be accepted by the tax authorities under the Safe Harbour regime.

1. Acceptance of declared transfer price [Rule 89(1)]

The transfer price declared by an eligible assessee shall be accepted by the income-tax authorities if both of the following conditions are satisfied:

- the option exercised by the assessee is held to be valid under rule 90; and
- the declared transfer price is in accordance with the prescribed circumstances as specified in sub-rule (2).

2. Prescribed circumstances [Rule 89(2)]

A. Transactions subject to operating profit margins, commission or threshold conditions

Sr. No.	**Eligible International Transaction**	**Circumstances**
1	Provision of IT services	OPM on OE ≥ 15.5%, where the aggregate OR from such transactions during the tax year does not exceed INR 2,000 crore
2	Provision of corporate guarantee	Commission / fee ≥1% per annum on the amount guaranteed
3	Provision of contract R&D services relating to generic pharmaceutical drugs	OPM on OE ≥24%, where the aggregate OR from such transactions during the tax year does not exceed INR 300 crore

4	Manufacture and export of core auto components	OPM on OE ≥12%
5	Manufacture and export of non-core auto components	OPM on OE ≥8.5%
6	Receipt of LVAIGS	Aggregate value of services, including a mark-up not exceeding 5%, should not exceed INR 10 crore during the tax year and the method of cost pooling, exclusion of shareholder and duplicate costs and reasonableness of allocation keys must be certified by an accountant
7	Provision of data centre services	OPM on OE ≥15%

B. Advancing of intra-group loans denominated in Indian Rupees

The interest rate declared in respect of the transaction should not be less than the one-year SBI Marginal Cost of Funds Lending Rate (MCLR) as on 1 April of the relevant tax year plus the following spread:

AE credit rating	Spread
AAA to A (or equivalent)	+175 basis points
BBB–, BBB, BBB+ (or equivalent)	+325 basis points
BB to B (or equivalent)	+475 basis points
C to D (or equivalent)	+625 basis points
Unrated AE, where the aggregate INR loans to all AEs does not exceed INR 100 crore as on 31 March of the relevant tax year	+425 basis points

If the aggregate INR loan exceeds INR 100 crore to unrated AEs, then the Safe Harbour benefit will not extend to the said international transaction.

C. Advancing of intra-group loans denominated in foreign currency

Declared interest rate in relation to the international transaction ≥the defined reference rate of the relevant foreign currency as on 30 September of the relevant tax year plus a spread that depends on both loan size (aggregate to all AEs as on 31 March) and rating:

i) Aggregate loans ≤ INR 250 crore (INR equivalent):

AE credit rating	**Spread**
AAA, AA+, AA, AA-, A+, A, A- (or equivalent)	+150 basis points
BBB+, BBB, BBB- (or equivalent)	+300 basis points
BB+, BB, BB-, B+, B, B-, C+, C, C-, D, or equivalent or unrated AE	+400 basis points

ii) Aggregate loans > INR 250 crore (INR equivalent):

AE credit rating	**Spread**
AAA, AA+, AA, AA-, A+, A, A- (or equivalent)	+150 basis points
BBB+, BBB, BBB- (or equivalent)	+300 basis points
BB+, BB, BB-, B+, B, B- (or equivalent)	+450 basis points
C+, C, C-, D or equivalent or unrated AE	+600 basis points

D. Definitions [Rule 89(3)]

Reference rate for foreign currency loans, all 6-month tenors:

Currency	**Benchmark**	**Add-on**
USD	Term Secured Overnight Financing Rate (SOFR) administered by Chicago Mercantile Exchange (“CME”)	+45 basis points
EUR	Euro Inter Bank Offered Rate (EURIBOR) administered by European Money Markets Institute	—
GBP	Term Sterling Overnight Index Average (SONIA) administered by ICE Benchmark Administration or Refinitiv	+30 basis points
JPY	Tokyo Term Risk Free Rate (TORF) administered by QUICK Benchmarks Inc	+10 basis points
AUD	Bank Bill Swap Rates (BBSW) administered by Australian Securities Exchange	—

SGD	Compounded Singapore Overnight Rate Average (SORA) administered by Monetary Authority of Singapore	+45 basis points

3. Credit rating

"Credit rating" means the rating assigned to the AE by a SEBI-registered and Reserve Bank of India (RBI) accredited credit rating agency applicable for the relevant tax year.

- Where only one rating exists, that rating shall be considered.
- Where multiple ratings exist, the lowest of such ratings shall be considered for the purposes of rule 89.

4. Duration and consequences [Rules 89(4) to 89(6)]

(a) Block period

Rules 89(1) and 89(2) apply for a block period of three tax years commencing from tax year 2026-27 and shall continue for subsequent block periods unless modified.

The margins, rates and circumstances prescribed under rules 89(1) and 89(2) shall remain in force for a block period of three tax years commencing from tax year 2026-27 and for subsequent blocks unless modified. This provides rate stability it does not by itself extend the validity of the assessees option for the entire block.

(b) No adjustments

Where the declared transfer price is accepted under rules 89(1) and 89(2)-

- no comparability adjustment and
- no allowance under section 165(3)(a)(ii)

shall be made to such transfer price.

The benefit contemplated by section 165(3)(a)(ii) will not be available to an assessee opting for Safe Harbour regime.

(c) Applicability of other provisions

The provisions of sections 171 and 172 continue to apply to the international transaction notwithstanding the exercise of the Safe Harbour option. Section 171 relates to preparation and maintenance of Transfer Pricing Study Report and section 172 relates to issuance of Accountant's Report in Form No 48. The assessee shall continue to prepare and maintain Transfer Pricing Study Report and also obtain an Accountants Report in Form 48 irrespective of the fact that it has exercised its option for Safe Harbour in respect of such international transactions.

Though the Safe Harbour provisions are silent as to whether benchmarking needs to be carried out for accepted eligible international transaction, practically, the assessee may not be required to undertake benchmarking analysis from second tax year onwards for accepted eligible international transaction. Having said that, CBDT clarification on this would be welcome to clear the ambiguity.

5. Conclusion

- The prescribed margins, interest rates and commission rates are minimum thresholds. A declaration below the prescribed benchmark results in the loss of Safe Harbour protection for that international transaction.
- The revenue thresholds for IT services (INR 2,000 crore) and contract R&D services relating to generic pharmaceutical drugs (INR 300 crore) are eligibility conditions. Exceeding the prescribed threshold renders the transaction ineligible for Safe Harbour benefit irrespective of the margin earned. It is to be noted that the revenue threshold for provision of IT services shall be tested only in the first year whereas the revenue threshold for generic pharmaceutical drugs will be for all the years.
- For intra-group loans, the applicable spread depends on the relevant benchmark date and credit rating of the AE. INR loans are benchmarked with reference to the SBI MCLR as on 1 April, whereas foreign currency loans are benchmarked with reference to the prescribed reference rate as on 30 September.
- Receipt of LVAIGS is subject to a dual requirement: (i) the aggregate value of services should not exceed INR 10 crore (inclusive of mark-up not exceeding 5 per cent); and (ii) the prescribed accountant's certification must be obtained.
- In the case of corporate guarantees, the prescribed commission rate of 1 per cent applies only to an explicit guarantee provided to a wholly owned

non-resident subsidiary that satisfies the definition of "corporate guarantee" under rule 86(d).

No Tolerance Band

The Safe Harbour regime does not provide for any comparability adjustment or tolerance range. Accordingly, the assessee must satisfy the prescribed benchmark in its entirety. Even a marginal shortfall from the prescribed margin, interest rate or commission would render the Safe Harbour provisions inapplicable for the relevant transaction.

Chapter 7

How is the Safe Harbour option exercised under Rule 90?

Rule 90 prescribes the procedure for exercising and opting for Safe Harbour in respect of all eligible international transactions other than provision of IT services.

The Rule provides for the following:

- The manner and timeline for exercising the option.
- The verification process by the AO.
- The circumstances in which a reference may be made to the TPO.
- The TPO after giving an opportunity to the assessee shall pass an order.
- If the option is held to be invalid the assessee can invoke the appellate mechanism before the Commissioner.
- The time limit for determination and validity of the option.

1. Exercise of option [Rule 90(1)]

To validly exercise the Safe Harbour option, the assessee must satisfy both of the following conditions:

- ***Filing Form No. 49***

Furnish Form No. 49, complete in all respects, to the AO on or before the due date specified under section 263(1)(c) of the 2025 Act for furnishing the return of income for the relevant tax year.

- ***Timely Filing of Return of Income***

Both the return of income and Form No. 49 must be filed on or before the due date specified under section 263(1)(c). The return of income must be filed before or simultaneously with Form No. 49.

Accordingly, delayed filing of either the return of income or Form No. 49 may render the Safe Harbour option invalid.

2. Verification of option by the Assessing Officer [Rule 90(2)]

Upon receipt of Form No. 49, the AO is required to verify:

- whether the assessee is an eligible assessee under rule 87; and
- whether the transaction is an eligible international transaction under rule 88.

The Safe Harbour option is treated as validly exercised only after these conditions are satisfied.

3. Reference to the TPO [Rule 90(3) and Rule 90(4)]

Where the AO doubts the validity of the Safe Harbour option, the AO shall make a reference to the TPO for determination of:

- the eligibility of the assessee; or
- the eligibility of the international transaction; or
- both.

The TPO may, by written notice, require the assessee to furnish information / documents / evidence within a specified time.

4. Invalidity of option [Rule 90(5)]

The TPO may declare the Safe Harbour option invalid where:

- the assessee fails to furnish the information or documents or evidence sought by the TPO; or
- the assessee is not an eligible assessee; or
- the transaction is not an eligible international transaction.

However, the TPO shall provide an opportunity of being heard before declaring the option to be invalid.

5. Objection before the Commissioner [Rule 90(6) and Rule 90(7)]

An Assessee aggrieved by the TPO's order may file objections before the Commissioner having jurisdiction over the TPO within *15 days* from receipt of the order.

The Commissioner shall provide the assessee with a reasonable opportunity of being heard and thereafter pass an appropriate order regarding the validity of the Safe Harbour option.

6. Verification of declared transfer price [Rule 90(8)]

Where the Safe Harbour option is held to be valid, the AO shall verify whether the transfer price declared by the assessee is in accordance with the circumstances prescribed under rule 89(2).

If the declared transfer price does not satisfy the prescribed Safe Harbour benchmarks, the AO shall adopt the applicable:

- OPM
- interest rate or
- commission

as specified in rule 89.

7. Statutory timelines [Rule 90(9)]

Authority	Action	Time Limit
AO	Making reference to TPO	Within 2 months from the end of the month in which Form No. 49 is received
TPO	Passing order declaring option invalid	Within 2 months from the end of the month in which reference is received
Commissioner	Disposal of objections	Within 2 months from the end of the month in which objections are received

8. Deemed validity of option [Rule 90(10)]

If the AO, TPO or Commissioner fails to make the reference or pass the order within the prescribed time limits, the Safe Harbour option exercised by the assessee shall automatically be treated as valid.

This deeming fiction provides certainty.

9. Electronic filing of Form No. 49 [Rule 90(11)]

Form No. 49 shall be furnished electronically either -

- under a digital signature or
- through an electronic verification code.

The form must be verified by the person authorised to verify the return of income under section 265.

10. Reference for non-eligible transactions [Rule 90(12)]

The AO may make a reference under section 166 in respect of an international transaction that is not an eligible international transaction.

Accordingly, the exercise of the Safe Harbour option for eligible transactions does not preclude transfer pricing examination of other non-eligible international transactions undertaken by the assessee.

11. Conclusion

Rule 90 establishes a time-bound comprehensive procedural code governing the exercise and determining the validity of the Safe Harbour option.

- Timely filing of both the return of income and Form No. 49 is mandatory.
- Eligibility of both the assessee and the international transaction is subject to verification.
- The jurisdiction of the TPO under rule 90 is confined to determining the validity of the Safe Harbour option.
- Strict statutory timelines apply to the AO, TPO and Commissioner.
- Failure of the authorities to act within the prescribed timelines results in automatic validation of the Safe Harbour option.
- Non-eligible international transactions remain subject to transfer pricing scrutiny under section 166.

Chapter 8

What is the special procedure for IT services under Rule 91?

Rule 91 prescribes a special procedural regime for Safe Harbour claims relating to eligible international transactions involving the provision of IT services. Once the option is validly exercised it remains effective for five consecutive tax years.

1. Continuation of option [Rule 91(1)]

Once a Safe Harbour option is validly exercised, it remains in force for five consecutive tax years. Accordingly, the assessee is not required to exercise the option annually.

2. Testing of revenue threshold [Rule 91(2)]

The aggregate OR threshold of INR 2,000 crore is required to be tested only for the first of the five consecutive tax years.

Therefore, if the threshold condition is satisfied in the first year, the assessee continues to remain eligible for the remaining four years notwithstanding subsequent fluctuations in revenue.

3. Exercise of option [Rule 91(3)]

For exercising the Safe Harbour option, the assessee is required to furnish Form No. 49, complete in all respects, electronically to the DGIT (Systems) for the first of the five consecutive tax years on or before the due date specified under section 263(1)(c) of 2025 Act for furnishing the return of income for that year.

4. Electronic verification of option [Rule 91(4)]

Following the filing of Form No. 49, electronic verification is undertaken to determine:

- whether the assessee is an eligible assessee;
- whether the transaction is an eligible international transaction; and
- whether the exercise of the option is valid.

5. Acceptance or rejection of option [Rule 91(5) to Rule 91(7)]

The assessee shall be intimated of the acceptance or rejection of the option within two months from the end of the month in which the option is exercised.

The option cannot be rejected unless the assessee is first provided with an opportunity to remove defects, if any, in the application.

Further, where the option is rejected electronically, the assessee shall be provided with the reasons for such rejection. This provision incorporates principles of natural justice into the electronic verification process.

6. Compliance during the five-year period [Rule 91(8) and Rule 91(13)]

Where the option is accepted:

- the assessee shall furnish its return of income in accordance with the Safe Harbour provisions for each of the five consecutive tax years and
- for each of the subsequent four years, the assessee is required to furnish a statement containing:
    - details of eligible transactions;
    - the quantum of such transactions and
    - the applicable profit margins.

The annual statement serves as a compliance and monitoring mechanism during the five-year block period.

7. Withdrawal of option [Rule 91(9) to Rule 91(12)]

The assessee may withdraw from the Safe Harbour option by furnishing a declaration to that effect.

However, the withdrawal must be made within six months from the end of the first tax year. Once withdrawn, the assessee loses the benefits of Safe Harbour provisions for the tax year for which the option is withdrawn and subsequent remaining tax years. Once withdrawn, the assessee shall not be eligible to again exercise the option for Safe Harbour till the expiry of original five tax years period.

Thus, from a practical standpoint, the due date of filing the return of income and Form No. 49 goes beyond the expiry of six months from the end of first tax year. Thus, there is ambiguity on the current time limit for withdrawing the Safe Harbour application which should be reckoned by the CBDT from the end of the month of filing Form No. 49. It is expected that the CBDT needs to re-visit rule 91(10).

8. Reference for non-eligible transactions [Rule 91(14)]

The AO may make a reference under section 166 in respect of international transactions other than the eligible international transaction.

Accordingly, acceptance under the Safe Harbour regime for eligible IT service transactions does not preclude transfer pricing examination of other non-eligible international transactions.

9. Electronic filing and certification of Form No. 49 [Rule 91(15) and Rule 91(16)]

Form No. 49 shall be:

- furnished electronically under a digital signature or electronic verification code;
- certified by the Chief Executive Officer or the Chairman and Managing Director of the assessee and
- verified by the person authorised to verify the return of income under section 265.

10. Power of the Director General of Income-tax (Systems) [Rule 91(17)]

The DGIT (Systems), with the approval of the Board, may prescribe:

- data structures;
- standards;
- formats;
- procedures for furnishing and verification of forms, statements, orders and declarations;
- any modifications thereto.

This provision underscores the technology-driven administration of the Safe Harbour regime for IT service providers.

11. Conclusion

- One filing provides certainty for five consecutive tax years.
- INR 2,000 crore revenue threshold is tested only in the first year of the block.
- Withdrawal is effectively a one-way decision because re-entry is prohibited until the original five-year period expires.
- Form No. 49 requires board-level certification by the CEO or Chairman and Managing Director.
- Acceptance of the option does not eliminate annual compliance requirements, as statements are required for each of the subsequent four years.

Chapter 9

When the Safe Harbour Rules do not apply (Rule 92)?

The benefit of SHR does not apply to the assessee whose AE is in a notified jurisdictional area (as per section 176) or in a no tax or low tax jurisdiction.

1. Statutory Provision

Nothing contained in rules 86, 87, 88, 89, 90 or 91 shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 176, or in a no tax or low tax country or territory.

2. Excluded Jurisdictions

The Safe Harbour provisions do not apply where the AE is located in:

- a country or territory notified under section 176 (Notified Jurisdictional Area), generally notified due to the absence of effective exchange of information with India; or
- a no tax or low tax country or territory, as defined in rule 86(m), where the maximum statutory income-tax rate is less than 15 per cent.

Accordingly, any eligible international transaction with an AE located in either of the above jurisdictions is excluded from the Safe Harbour regime.

3. Analysis

Rule 92 overrides the Safe Harbour framework for specified jurisdictions. The location of the AE becomes a threshold condition that must be satisfied before examining any other eligibility criteria. Consequently, even where the assessee qualifies as an eligible assessee, the transaction is an eligible international transaction and the prescribed operating margins or pricing conditions are met, the Safe Harbour option remains unavailable if the AE is situated in a notified jurisdiction or a no tax or low tax jurisdiction.

Assessees should therefore verify the tax jurisdiction of the AE at the outset before evaluating the substantive or procedural requirements of the SHR. Where rule 92 applies, the transaction must instead be benchmarked and substantiated under the normal transfer pricing provisions.

Chapter 10

Can an Assessee opt for Safe Harbour and still pursue Mutual Agreement Procedure (Rule 93)?

1. Statutory Provision

Where transfer price in relation to an eligible international transaction, declared by an eligible assessee, is accepted by the income-tax authorities under section 167, 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 specified territory outside India, as referred to under section 159.

2. Analysis

Rule 93 establishes that where the transfer price declared for an eligible international transaction is accepted by the income tax authorities under section 167, the assessee is not entitled to invoke the mutual agreement procedure (MAP) under a Double Taxation Avoidance Agreement with a country or specified territory outside India (as referred to in section 159).

Chapter 11

Does opting for Safe Harbour eliminate Transfer Pricing Documentation [Rule 89(6)]?

Documentation and compliance obligations not dispensed with

The Safe Harbour regime simplifies the determination of transfer pricing, but it does not dispense with the assessees documentation and compliance obligations.

The obligation to maintain prescribed information and documents under section 171 of the 2025 Act and to furnish the Accountant's Report under section 172 in Form 48 continues to apply to all international transactions, including those covered by the Safe Harbour provisions.

Though the Safe Harbour provisions are silent as to whether benchmarking needs to be carried out for accepted eligible international transaction, practically, the assessee may not be required to undertake benchmarking analysis from second tax year onwards for accepted eligible international transaction. Having said that, CBDT clarification on this would be welcome to clear the ambiguity.

In addition to the prescribed transfer pricing documentation, the assessee should retain adequate evidence to substantiate its eligibility for the Safe Harbour regime, including:

- Margin computations derived from the audited financial statements.
- Inter-company agreements governing the relevant transactions.
- Cost certificates issued by accountants satisfying the eligibility criteria prescribed under rule 86.
- Credit rating certificates, where required for larger corporate guarantees.

- Supporting documentation evidencing the 'insignificant risk' characterisation and compliance with the OEM sales thresholds, where applicable.

Chapter 12

What happens if the Safe Harbour option is invalid or the prescribed conditions are not met?

Where the Safe Harbour option is found to be invalid—for example, because the AE is located in a jurisdiction covered by Rule 92, the assessee may not obtain any benefits of the Safe Harbour provisions.

Further, if the Safe Harbour option is found to be invalid because of the prescribed margins, rates or other conditions are not satisfied during a year of the Safe Harbour period, the assessee loses the benefit of the Safe Harbour provisions for the relevant transaction and the relevant tax year.

In such cases, the transaction becomes subject to the ordinary transfer pricing provisions and the TPO may determine the ALP in accordance with the methods prescribed under section 165 of the 2025 Act.

NOTE

The tolerance band otherwise available in regular ALP determination does not apply to prices declared under Safe Harbour.

Chapter 13

Can the Safe Harbour margin be treated as an ALP?

The Safe Harbour provisions are applicable only to the eligible assessee for the eligible international transactions. The assessee needs to specifically opt for the Safe Harbour regime to obtain certainty. The assessee who has not opted for Safe Harbour Regime cannot seek the benefits of the margins / rates / fees prescribed in the Safe Harbour provisions.

Accordingly, a Safe Harbour margin cannot be considered as ALP for an international transaction.

Chapter 14
Case Studies

The following case studies illustrate the practical application of the Safe Harbour provisions for international transactions under section 167 of the 2025 Act and rules 86–93 of the Income-tax Rules,2026.

- Each eligible transaction category
- Procedures to be followed by the assessee
- Principal eligibility conditions to be satisfied
- Exclusions applicable under the Rules.
- Consequences of breach of conditions.

NOTE: All figures used in the case studies below are illustrative and for explanatory purposes only.

Sr. No.	Particulars
1	Indian entity is a captive software development centre
2	Indian entity undertakes contract research on generic pharmaceutical drugs with insignificant risk
3	Indian entity is an auto-component manufacturer
4	Indian parent entity guaranteeing the borrowing of its overseas subsidiary
5	Indian entity advanced Rupee and foreign-currency loans to its overseas AEs
6	Indian entity avails routine low value-adding intra-group services from its overseas associated enterprise
7	Indian entity engaged in providing data centre services to its associated enterprise
8	Complex, high-value transaction – Safe Harbour or APA?

Case Study 1: Indian entity is a Captive Software Development Centre

Facts

ABC India Private Limited having its registered office located at New Delhi, is a wholly-owned captive subsidiary of ABC Inc., USA. It provides software development services to its parent on a cost-plus basis and assumes no market, credit, or entrepreneurial risk.

- Aggregate revenue billed to the parent for the year is INR 624 crore.
- OE for the IT services is INR 540 crore.
- It has earned a mark-up of approximately 15.56 per cent on its OE.
- The company wishes to obtain certainty for five years and avoid annual benchmarking studies from second tax year onwards for the international transaction relating to provision of software development services.

Issue

Is ABC India Private Limited eligible for Safe Harbour? If so, what margin must it declare and how to opt for the Safe Harbour regime?

Analysis

ABC India Private Limited qualifies as a captive provider of software development services bearing insignificant risk. Therefore, it is an eligible assessee as per rule 87 for IT services. Software development falls within the consolidated "IT Services" category under rule 88, which also covers ITeS, KPO and contract R&D for software. Thus, it is an eligible international transaction as per rule 88.

Its aggregate revenue of INR 624 crore is comfortably within the INR 2,000 crore threshold prescribed under rule 89, making the category available to it. The prescribed benchmark as per rule 89 is a minimum OPM of 15.5 per cent on OE which is achieved by the assessee.

Form No. 49 is filed before the Director General of Income tax (systems) as per the procedure under rule 91 on or before the due date of furnishing return of income.

Scenario 1: Safe Harbour application is accepted by DGIT (Systems)

Within two months from the end of the month in which the option was exercised, the DGIT (Systems) conveyed acceptance to the assessee.

Thus, the assessee has obtained certainty for a block period of five years. It will only be required to furnish an annual statement on or before the due date of furnishing return of income for each of the four tax years following the first tax year.

Scenario 2: Safe Harbour application has defects

The DGIT (Systems) communicates certain defects in the Safe Harbour application and grants an opportunity to the assessee to remove the defects. The assessee removes the defects. Consequently, the Safe Harbour application is accepted by DGIT (Systems).

Scenario 3: Safe Harbour application is withdrawn by the Assessee

The assessee furnishes a declaration for withdrawing the Safe Harbour application. The said declaration is filed before the expiry of six months from the end of the first tax year. Thus, the assessee loses the benefits of Safe Harbour provisions for the tax year for which the option is withdrawn and subsequent remaining tax years. Once withdrawn, the assessee shall not be eligible to again exercise the option for Safe Harbour till the expiry of original five tax years period.

However, from a practical standpoint, the due date of filing the return of income and Form No. 49 goes beyond the expiry of six months from the end of first tax year. Thus, there is ambiguity on the current time limit for withdrawing the Safe Harbour application which should be reckoned by the CBDT from the end of the month of filing Form No. 49. It is expected that the CBDT would have a relook of rule 91(10).

Scenario 4: Turnover crosses prescribed threshold of INR 2,000 crore in the second tax year

Suppose in the subsequent tax years (i.e., 2027-28), the assessees turnover for the international transaction crosses the prescribed threshold of INR 2,000 crore, . the Safe Harbour application would still continue to be valid in view of rule 91(2).

Case Study 2: Indian entity undertakes Contract research on generic pharmaceutical drugs with insignificant risk

Facts

ABC India Private Limited, having its registered office located at Mumbai conducts contract R&D on generic pharmaceutical molecules for its German AE. It bears insignificant risk and does not own the resulting intellectual property (IP).

- Revenue for the year is INR 120 crore
- OE is INR 95 crore.

Issue

What margin applies to pharma contract R&D and does it fall within the consolidated IT category?

Analysis

Contract R&D for generic pharmaceutical drugs is a *separate category* as per rule 88(d) — it is not merged into the IT services bucket under rule 88(a). The prescribed margin remains a minimum of *24 per cent OPM on OE* and the revenue threshold is INR 300 crore.

Form No. 49 is validly filed within the stipulated time frame.

Scenario 1 – The AO doubts the Safe Harbour option exercised

On receipt of the Safe Harbour application, the AO doubts the validity of the option exercised by the assessee. Post this, the AO makes a reference to the TPO for determination of the eligibility of the assessee after a period of three months from the end of the month in which Form No. 49 is received by the AO. Thus, as per rule 90(10), since the AO made a reference to the TPO after expiry of a period of two months from the end of the month in which Form No. 49 was received by him the option for Safe Harbour exercised by the assessee shall be treated as valid.

Scenario 2 – Reference is made to the TPO

The AO doubts the validity of exercise of Safe Harbour option and makes a reference to the TPO within the prescribed timelines. The TPO after granting the assessee an opportunity of being heard holds the application to be invalid. The assessee, as per rule 90(6), files its objection within 15 days of receipt of the order of the TPO.

As per rule 90(7), the Commissioner after providing a reasonable opportunity of being heard passes an order in respect of the validity of the option exercised.

Scenario 3 – Revenue threshold to be tested for block period of all three tax years

The prescribed revenue of INR 300 crore for the said category of international transaction is to be tested for all three tax years and not only the first year as done for the category of international transaction relating to the provision of IT services.

Case Study 3: Indian entity is an Auto-component manufacturer

Facts

ABC India Private Limited having its registered office located at Pune manufactures and exports engine and transmission parts (core components) and lithium-ion battery packs for electric and hybrid vehicles.

It is also engaged in manufacturing plastic trim and fasteners (non-core). Its total turnover is more than 90 per cent to OEM.

Core-component segment OE is INR 400 crore and non-core OE is INR 80 crore.

Issue

What margins apply to the two segments and are lithium-ion batteries covered?

Analysis

The definition of "core auto components" in rule 86 now expressly includes *lithium-ion batteries for use in electric or hybrid electric vehicles*. Therefore the battery packs attract the core-component category.

Core auto components carry a minimum *12 per cent* operating margin on OE while non-core auto components require a minimum operating margin of *8.5 per cent* in relation to its OE. It is to be noted that both the categories require that out of its total turnover 90 per cent or more of sales be to OEMs, which is satisfied here. These are non-IT transactions for which rule 90 is to be followed.

Computation

Segment	OE	Minimum margin
Core (incl. Li-ion batteries)	INR 400 crore	12% = INR 48 crore
Non-core	INR 80 crore	8.5% = INR 6.8 crore

Case Study 4: Indian Parent entity guaranteeing the borrowing of its overseas subsidiary

Facts

ABC India Private Limited, having its registered office located at Chennai, provides an explicit corporate guarantee for a short-term bank loan taken by its wholly-owned subsidiary, ABC GmbH, Germany.

There are following two scenarios:

Scenario A: Guaranteed amount is INR 85 crore.

Scenario B: Guaranteed amount is INR 260 crore but ABC GmbH (AE) is independently credit-rated by an agency registered with Securities and Exchange Board of India and the AE is rated to adequate to highest safety band.

Issue

What guarantee commission satisfies Safe Harbour and is INR 260 crore guarantee transaction eligible for Safe Harbour?

Analysis

A guarantee qualifies where it is *explicit*, given to a *wholly-owned non-resident subsidiary*, and either the amount does not exceed INR 100 crore or the AE is rated adequate-to-highest safety by a recognised agency. The prescribed commission is a minimum of *1 per cent per annum* on the guaranteed amount.

Scenario A (INR 85 crore) is within the INR 100 crore cap — qualifies on the monetary test. **Scenario B** (INR 260 crore) exceeds the cap but qualifies on the alternative rating test because the subsidiary holds a top-tier rating.

Computation

Scenario A commission	1% × INR 85 crore = INR 0.85 crore
Scenario B commission	1% × INR 260 crore = INR 2.60 crore

Both guarantees qualify — Scenario A under the INR 100 crore monetary limb, and Scenario B under the credit-rating limb. Charging at least 1 per cent per annum secures Safe Harbour.

Case Study 5: Indian entity advanced Rupee and foreign-currency loans to it*s overseas AEs

Facts

ABC India Private Limited having its registered office located at Ahmedabad advances two intra-group loans: Loan 1 of INR 50 crore denominated in INR and Loan 2 of 10 million denominated in US dollars, both to AEs. The borrowing AEs carry differing credit ratings.

Issue

How is a Safe Harbour interest rate determined for each loan?

Analysis

Rule 89 sets the Safe Harbour interest rate by reference to a *benchmark rate plus a spread that increases with the borrower's credit risk*. For an INR loan the benchmark is not less than *one-year MCLR* of SBI as on 1 April of the relevant tax year and for a foreign-currency USD loan it is six month term SOFR administered by CME increased by 45 basis points to be considered as on 30 September of the relevant tax year for that currency.

Computation

Loan 1 (INR)	Minimum rate = SBI 1-yr MCLR (1 April) + rating-based spread per Rule 89
Loan 2 (USD)	Minimum rate = 6-month SOFR + 45 basis points + rating-based spread per Rule 89

Each loan secures Safe Harbour by charging at least the benchmark-plus-spread rate appropriate to its currency and the borrower's credit rating. It is worth noting that if the AE is unrated, the +425 bps spread is available where the aggregate INR loans to all AEs do not exceed INR 100 crore as on 31 March.

Case Study 6: Indian entity avails routine low value-adding intra-group services from its overseas associated enterprise

Facts

ABC India Private Limited having its registered office located at Bengaluru receives routine support services — HR ,administration, accounting support, IT helpdesk — from a group entity situated outside India.

These are non-core, support-natured services that do not involve valuable intangibles or significant risk. The value of receipt of low-value adding intra-group services amounts to INR 15 crore.

Issue

How does Safe Harbour apply to intra-group services which the Indian entity receives?

Analysis

For LVAIGS, the Safe Harbour accepts a charge built on a *pooled cost base plus a modest mark-up not exceeding 5 per cent,* supported by an Accountant's certificate certifying the reasonableness of the allocation keys used for allocation of costs to the assessee.

In the instant case, since the eligible international transaction exceeds the prescribed threshold of INR 10 crore, the assessee shall not be eligible for the Safe Harbour regime. In that case, the assessees international transaction relating to receipt of LVAIGS shall continue to be governed under normal transfer pricing provisions wherein the assessee would have to maintain need benefit test documentation to demonstrate the receipt of services. In order to obtain certainty for the said international transaction, the assessee may evaluate the option of APA.

Case Study 7: Indian entity is engaged in providing data centre services to its associated enterprise

Facts

ABC India Private Limited has its registered office located at Hyderabad wherein it has a dedicated secure space which houses computing and networking equipment for the purpose of collecting, storing large amounts of data. It provides data centre services to its overseas AE through the use of physical infrastructure (e.g., land, buildings, cooling systems, etc.) and technology infrastructure.

The OE of the data-centre segment is INR 100 crore.

Issue

Is the new data centre eligible for Safe Harbour benefit, and what margin applies?

Analysis

Data centre services are *now eligible for SHR vide the amendment introduced by Budget 2026*. The eligibility condition requires genuine *physical infrastructure in India* — servers, power, connectivity and HR. The prescribed margin is a minimum of *15 per cent on operating cost.*

Computation

Operating cost	INR 100 crore
Minimum margin (15%)	INR 15 crore
Minimum revenue to declare	INR 115 crore

No threshold prescribed for this type of service.

Case Study 8: Complex, high-value transaction — Safe Harbour or APA?

Facts

ABC India Private Limited having its registered office located at Kolkata provides software development services involving valuable and unique intangibles to its AE located outside India. The value of international transaction in the instant case is INR 2,500 crore.

Issue

Should ABC India Private Limited opt for Safe Harbour provisions or Advance Pricing Agreement (APA)?

Analysis

Safe Harbour offers fixed predefined margins wherein the Indian entity assumes insignificant risk while rendering services to its AE.

An Advance Pricing Agreement on the other hand offers a customised pricing methodology negotiated with CBDT wherein the assessee can obtain a certainty for a period of five years and a roll back of four years. The APA involves a filing fee whereas the Safe Harbour does not.

For routine captive transactions involving insignificant risk, Safe Harbour is the efficient choice. For *complex, high-value transactions with unique intangibles,* APA needs to be considered for the purpose of obtaining certainty.

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