

CBDT extends safe harbour to outbound intra-group loans

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THE CENTRAL BOARD of Direct Taxes (CBDT) has extended the provisions of safe harbour rules to outbound transactions involving an Indian company lending to a foreign one. Till now, such norms only applied to inbound intra-group loans.

The amendments, notified on Tuesday, have tweaked the definition of intra-group loans and also removed the condition of sourcing the loan only in the Indian rupee. The amendments will come into effect from April 1, 2024.

A 'safe harbour' means circumstances in which income tax authorities shall accept the transfer price declared by the assessee. In

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a transfer-pricing (TP) regime, safe harbour is a provision that applies to a defined category of taxpayers or transactions and that relieves eligible taxpayers from certain obligations otherwise imposed by a jurisdiction's general TP rules, according to the I-T department.

Experts say the amendment to the safe harbour rules is primarily to align with the current global economic scenario where the money could be sourced by the lending

Indian company in currencies other than the Indian rupee.

Other operating amendments which allow certain income and expenses on which depreciation has been claimed.

"This move is primarily to rationalise the computation mechanism of operating profits in safe harbour norms," said Amit Agarwal, partner, Nangia & Co LLP.

Saurav Sood, practice leader - International Tax and Transfer Pricing at SW India, said: "The amendments to the safe harbour rules shall apply from FY25, thus those entities which are contemplating to opt for safe harbour as a measure to gain certainty on transfer pricing transactions can accordingly change their budgeting."

Govt reworks definition of intra-group loans for safe harbour

Shishir Sinha
New Delhi

Intra-group loans for associated enterprises are no longer to be given in Indian Rupee only from the Income Tax point of view, say the new notified changes in safe harbour rules by the Finance Ministry. It is possible now to use reference rate of various countries other than Libor (London Inter Bank Offer Rate) for granting such loans.

"Intra-group loan means a loan advanced to an associated enterprise being a non-resident, where the loan 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 does not include credit line or any other loan facility which has no fixed term for repayment," the notification said.



LIBERALISING SYSTEM. It is possible now to use reference rate of various countries other than Libor IBOR (London Inter Bank Offer Rate) for granting such loans

According to Amit Agarwal, Partner with Nangia & Co, one key change in the proposed amendment to the safe harbour rules provides for intra-group loans where the condition of sourcing the loan in Indian Rupee is being removed.

"This is primarily to align with the global economic scenario where a liberal regime has been put in place for money to be sourced by the lending Indian company. The condition of sourcing in Indian rupee has been re-

moved," he said.

Safe harbour means circumstances in which the income-tax authorities will accept the transfer price declared by the assessee. Thus, safe harbour rules means binding rules laid down under law which oblige income-tax authorities to accept the transfer price declared by the assessee.

According to Income Tax Department, often, eligible taxpayers complying with the safe harbour provision will be relieved from burden-

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- To come into effect from April 1, 2024
- Condition to source intra group loans in INR removed
- The provision relating to the transfer of assets amended to exclude those assets that are not like fixed assets for which depreciation has already been accounted for

some compliance obligations, including some or all associated TP (transfer pricing) documentation requirements.

OTHER AMENDMENTS

Further, the notification has also amended operating expenses and operating revenue definition by excluding loss or income on sale of as-

sets on which depreciation has been charged and such depreciation forms part of operating expense. The amendment will help in streamlining the calculation of revenue and expenses for the purposes of calculating base for charge of transfer pricing margins, Saurav Sood, Practice Leader (International Tax and Transfer Pricing) at SW India said.

"The amendments to the safe harbour rules shall be applicable from the financial year 2024, thus those entities which are contemplating to opt for safe harbour as measure to gain certainty on transfer pricing transactions can accordingly to their budgeting by taking such amendments into consideration," Sood said.

The loans to eligible subsidiaries abroad will now relate to foreign currency loans that are not sourced in Indian Rupee. The provision relating to the transfer of assets has also been amended to exclude those assets that

are not like fixed assets for which depreciation has already been accounted for. According to Jyoti Prakash Gadia, Managing Director at Resurgent India, "This will bring in more clarity and transparency and avoid multiple benefits accruing to the assessee."

The interest spread over the benchmark reference rate have been revised with applicable rates separately for the amounts below and above ₹250 crore to facilitate a more realistic assessment in line with the rating of the associated group enterprise.

Shruti K.P, Partner, Induslaw, highlighted that six alternative base rates have been introduced, namely Secured Overnight Financing rate (SOFR), Euro Inter Bank Offered Rate (EURIBOR), Sterling Overnight Index Average (SONIA), Tokyo Term Risk Free Rate (TORF), Bank Bill Swap Rates (BBSW) and Singapore Overnight Rate Average (SORA).

CBDT amends definition of intra-group loans for safe harbour

Removes condition of sourcing the loan in Indian rupees, and excludes those assets that are not like fixed assets for which depreciation has already been accounted for



Surabhi

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The Central Board of Direct Taxes has notified amendments to Rule 10TA and Rule 10TD of the Income Tax Rules that relate to safe harbour provisions for international transactions, with effect from April 1, 2024.

Amit Agarwal, Partner, Nangia & Co, noted that key amendment in the proposed amendment to the safe harbour rules provides for intra-group loans where the condition of sourcing the loan in Indian rupees is being removed. "This is primarily to align with the current global economic scenario where the money could be sourced by the lending Indian company other than Indian rupees and as such this condition of sourcing in Indian rupees has been removed," he said.