

Press Release

Section 92CB of the Income-tax Act provides for framing of safe harbour rules. The determination of arms length price u/s 92C or 92CA of the Act is subject to these safe harbour rules. The definition of safe harbour rule provided in section 92CB means circumstances in which the Income-tax Authority shall accept the transfer price declared by the assessee.

The draft safe harbour rules were placed in public domain along with CBDT Press Release on 14.08.2013 seeking comments of various stake holders. The comments received from various stake holders have been considered and necessary modifications have been made to the draft rules. The finalized safe harbour rules are being notified separately. The salient feature of the modifications incorporated in the final safe harbour rules are:-

- (i) The safe harbour rules shall be applicable for 5 assessment years beginning from assessment year 2013-14.
- (ii) An assessee can opt for the safe harbour regime for a period of his choice but not exceeding 5 assessment years. This option can be exercised by filing of Form 3CEFA which has been prescribed in the rules.
- (iii) In case of transactions in the nature of routine ITES and ITS activities the earlier ceiling of Rs 100 crore has been removed. Transactions upto Rs. 500 crore have been provided safe harbour margin of 20% and transaction above Rs.500 crore have been provided safe harbour margin of 22% .Similarly, the ceiling of Rs. 100 crore provided for transactions in the nature of corporate guarantee has been removed. The Safe harbour would be available in case of transactions above Rs 100 crore only if the wholly owned subsidiary has been rated to be of adequate to highest safety by a rating agency registered with SEBI. The safe harbour margin for such transactions above Rs 100 crore has been reduced to 1.75% of the amount guaranteed.
- (iv) The definition of Knowledge process outsourcing (KPO) has been rationalized to provide reasonable distinction from routine business process outsourcing activity. The safe harbour operating margin has been reduced from 30% to 25%. Further the ceiling in respect of KPO transactions has been removed.
- (v) The safe harbour provisions would be available only if the assessee satisfies the eligibility conditions provided in the rules and in respect of such international transactions which are eligible for safe harbour as provided in the rules.

- (vi) The rules provide for a time bound procedure for determination of the eligibility of the assessee and the international transactions. Any rejection of the option exercised by the assessee shall be by way of a reasoned order passed after hearing the assessee. The assessee shall have a right to file an objection with the Commissioner against adverse finding regarding the eligibility. The Commissioner shall thereafter decide about the validity of the option exercised by the assessee.
- (vii) In case the action is not taken by any of the authorities within the following time lines provided in the rules the option exercised by the assessee shall be treated as valid,;-
 - (a) the reference by the Assessing Officer (AO) to the Transfer Pricing Officer (TPO) shall be made within a period of two months from the end of the month in which Form No.3CEFA is received by him;
 - (b) the TPO shall pass an order determining the validity of the option exercised by the assessee within a period of two months from the end of the month in which reference from AO is received by him;
 - (c) the Commissioner shall pass an order on the objection received from the assessee within a period of two months from the end of the month in which the objection has been received by him.
- (viii) Once the option exercise by the assessee is held to be valid it shall remain so for the period opted unless the assessee voluntarily opts out of safe harbour regime by furnishing a statement to this effect to the Assessing Officer.
- (ix) The assessee shall be required to submit a statement regarding the quantum of international transaction, its nature and the operating margins or rate of interest or commission for the relevant assessment years covered under the period for which safe harbour is option is exercised.
- (x) The option exercised by the assessee can be held invalid in an assessment year following the initial assessment year only if there is change in the facts and circumstances relating to the eligibility of the assessee or of the international transaction. However, such withdrawal shall be done only after providing opportunity of being heard to the assessee. The assessee has a right to file his objection with the Commissioner, who shall after hearing the assessee determine the validity of the option.