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New Safe Harbour rules released by CBDT

The Central Board of Direct Taxes has rationalized the Safe-Harbour ratios that were earlier declared for Software Development Services, IT Enabled Services, KPO services, Loans in INR and corporate guarantees granted by Indian taxpayers to overseas AEs and Contract R&D services in software development. The board has also released new Safe harbor rules for international transactions like loans in foreign currency and for low value- adding intragroup services (LVIGS) fees paid by Indian taxpayers to its overseas group AE.

The safe harbor ratios were first declared w.e.f AY 2013-14 to AY 2017-18 and the new safe-harbor ratios are effective from AY 2017-18 providing an overlap for the current year, where the taxpayers will be allowed to opt for the new rules or revised rules whichever are more beneficial to them.

NASSCOM has been advocating for reducing the safe harbor margins since the last rules were released emphasizing how high margins are leading to Safe Harbours being ineffective for the sector. Rationalization of Safe-Harbour margins for software and ITeS service providers is a welcome change in light of wide-spread litigation in this industry. However, the continued sub-classification in the service categories may pose problems due to an overlapping definitions which are subject to interpretations. Further, the limits imposed indicate that companies with a higher turnover (i.e over INR 200 crores) cannot adopted safe harbours and hence are expected to adopt APAs. This makes it restrictive.

A summary of the old and new provisions for relevant services for the sector is provided below:

Particulars	Old provisions	Amended provisions
Provision of software development services	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is	
	(i) not less than 20 per cent, where value of transactions does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent, where value of transactions, exceed a sum of five hundred crore rupees;.	(i) not less than ***17 per cent***, where value of transaction does not exceed a sum of ***one hundred crore rupees***; or (ii) not less than ***18 per cent***., where value of transaction exceeds a sum of one hundred crore rupees but does not exceed a sum of ***two hundred crore rupees***.
Provision of information technology enabled services	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is –	
	(i) not less than 20 per cent, where value of transactions does not exceed a sum of five hundred crore rupees; or (ii) not less than 22 per cent, where value of transactions,	(i) not less than ***17 per cent***, where value of transaction does not exceed a sum of ***one hundred crore rupees***; or (ii) not less than ***18 per cent***., where value of transaction exceeds a sum of ***one hundred crore rupees but does***

	exceed a sum of five hundred crore rupees;.	***not exceed a sum of two hundred crore rupees***.
Provision of knowledge process outsourcing services	The operating profit margin declared by the eligible assessee for the eligible international transaction in relation to operating expenses is not less than 25 per cent.	The value of international transaction ***does not exceed a sum of two hundred crore rupees*** and the operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense is – (i) ***not less than 24 per cent. and the Employee Cost in relation to the Operating Expense is at least sixty per cent.***; ***(ii) not less than 21 per cent. and the Employee Cost in relation to the Operating Expense is forty per cent. or more but less than sixty per cent.;*** or (iii) ***not less than 18 per cent. and the Employee Cost in relation to the Operating Expense does not exceed forty per cent***.
Provision of contract research and development services wholly or partly relating to software development	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than 30 per cent.,	The operating profit margin declared by the eligible assessee from the eligible international transaction in relation to operating expense incurred is not less than ***24 per cent., where the value of the international transaction does not exceed a sum of two hundred crore rupees***