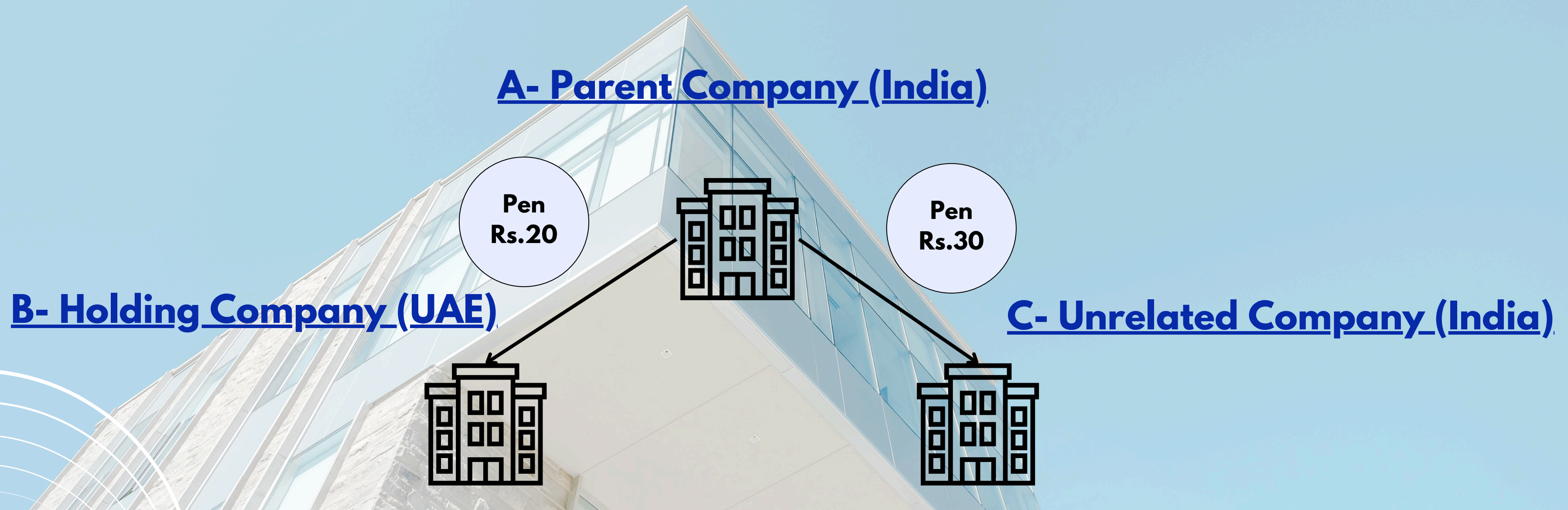


SAFE HARBOUR RULES



TRANSFER PRICING

- Transfer pricing is a practice used by multinational corporations to manage their profits and taxation across different jurisdictions.
- Transfer pricing refers to the pricing of goods, services, or intangible assets that are traded between associated enterprises within a multinational corporation.
- Multinational corporations may engage in transfer pricing to strategically allocate profits to jurisdictions with lower tax rates or tax havens. This allows them to minimize their overall tax liability.



DEFINITIONS

ASSOCIATED ENTERPRISE

Section 92A, refers to enterprises with shared management, control, or capital, indicated by factors like shareholding, loans, board appointments, or business interdependencies.



INTERNATIONAL TRANSACTION

Section 92B, deal between related companies, at least one of which is based abroad, involving buying/selling goods/services, assets, or lending/borrowing money, and may include cost-sharing agreements.



OPERATING PROFIT MARGIN

The ratio of operating profit relative to total operating revenue, crucial for evaluating the profitability of core business activities and determining arm's length pricing in related-party transactions.



ARM'S LENGTH PRICE(ALP)

Section 92C ensures that transactions between related entities are priced as if they were between unrelated parties under similar conditions, aiming to prevent profit distortion and ensure fair valuation.



METHODS OF CALCULATING ARMS LENGTH PRICE (SECTION 92C)



SAFE HARBOUR RULES

- **A protective shield for businesses, ensuring income-tax authorities accept declared transfer prices.**
- **A legal escape route for businesses, offering protection from tax scrutiny on declared transfer prices.**
- **Navigating the seas of taxation with binding rules that secure the transfer prices declared by businesses.**
- **Legal provisions offering a tax haven for businesses through simplified accounting methods**

A significant volume of transactions faces adjustments, leading to substantial disputes. Therefore, government has empowered the CBDT by insertion of provisions of Section 92CB by Finance Act, 2009 to formulate “Safe Harbour The Rules”, i.e. to provide the circumstances in which the Income Tax Authorities shall accept the transfer price.

The Finance (No.2) Act, 2009, introduced Section 92CB effective April 1, 2009, to curb transfer pricing audits. It mandates that determining the arm's length price under Section 92C or Section 92CA is now subject to safe harbour rules.

DEFINITIONS AS PER RULE 10TA

Operating Expenses: Costs incurred by a business for its regular operations and eligible international transactions in the previous year, but excluding loss on sale of assets and investments.

Operating Income : Revenue earned by a business from its regular operations and eligible international transactions in the previous year, but excluding Income on sale of assets and investments.

Operating Margin
Operating Profit/Operating Expense

The Central Board of Direct Taxes (CBDT) issued Notification no. 104/2023 on December 19, 2023, amending the Safe Harbour rules, which will come into effect from April 1, 2024.

The amendment, 2023 by CBDT clarifies that loss/gain upon the transfer of assets or investments, for which depreciation or amortization was initially accounted for as part of operating expenses or operating income, will now be included in calculating operating expense or operating income.

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of domestic transactions

Specified domestic transaction	Circumstances
Electricity Services: Supply, Transmission, and Wheeling	The tariff determination for Electricity Supply, Transmission, and Wheeling is given by the Appropriate Commission in accordance with the Electricity Act, 2003 (36 of 2003)
Purchase of milk or milk products	Milk and milk product prices are determined based on quality, considering fat content and Solid Not Fat (SNF) content. The rates are fixed independently of the quantity procured, members' shares in the cooperative society, and voting power.

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances
Provision of software development services	<p>The operating profit margin :</p> <ul style="list-style-type: none">• not less than 17% if the aggregate transaction value is up to 100 crore rupees.• not less than 18% if the aggregate transaction value exceeds 100 crore rupees but does not exceed 200 crore rupees.
Provision of information technology enabled services	<p>The operating profit margin :</p> <ul style="list-style-type: none">• not less than 17% if the aggregate transaction value is up to 100 crore rupees.• not less than 18% if the aggregate transaction value exceeds 100 crore rupees but does not exceed 200 crore rupees.

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances												
Advancing of intra-group where the amount of loan is denominated in Indian Rupees (INR).	The interest rate of transaction is not less than the one-year marginal cost of funds lending rate of State Bank of India as on 1st April of the relevant previous year plus,-												
	<table><tr><th>Credit Rating of AE</th><th>Safe Harbour Rate</th></tr><tr><td>AAA to A</td><td>Reference Rate + 175 basis Points</td></tr><tr><td>BBB- to BBB+</td><td>Reference Rate + 325 basis Points</td></tr><tr><td>BB to B</td><td>Reference Rate + 475 basis Points</td></tr><tr><td>C to D</td><td>Reference Rate + 625 basis Points</td></tr><tr><td>Rating not available & loans <100 crore</td><td>Reference Rate + 425 basis Points</td></tr></table>	Credit Rating of AE	Safe Harbour Rate	AAA to A	Reference Rate + 175 basis Points	BBB- to BBB+	Reference Rate + 325 basis Points	BB to B	Reference Rate + 475 basis Points	C to D	Reference Rate + 625 basis Points	Rating not available & loans <100 crore	Reference Rate + 425 basis Points
Credit Rating of AE	Safe Harbour Rate												
AAA to A	Reference Rate + 175 basis Points												
BBB- to BBB+	Reference Rate + 325 basis Points												
BB to B	Reference Rate + 475 basis Points												
C to D	Reference Rate + 625 basis Points												
Rating not available & loans <100 crore	Reference Rate + 425 basis Points												

AMENDMENTS IN SAFE HARBOUR RULES, 2023

	OLD RULES	AMEND MENT 2023	NEW RULES
RULE 10TA: Intra-group loan definition	<ul style="list-style-type: none"> • Recipient should be a non-resident wholly owned subsidiary. • The scope of coverage previously included only loans sourced in Indian Rupees. 		<ul style="list-style-type: none"> • Recipient can be any non-resident associated enterprise (AE). • Definition of intra-group loan under rule 10TA of the Rules is now amended to remove reference only to loans sourced in Indian Rupees.
Rule 10TD: Interest rate for intra-group loan denominated in Indian Rupees	Safe Harbour interest rate was prescribed based on the credit rating of the AE assigned by CRISIL.		Safe Harbour interest rates now rely on the credit rating of the Associated Enterprise (AE) from a SEBI-registered and RBI-accredited credit rating agency.

AMENDMENTS IN SAFE HARBOUR RULES, 2023

	OLD RULES	AMEND MENT 2023	NEW RULES
Rule 10TD: Interest rate for intra-group loan denominated in foreign currency	<p>Safe Harbour interest rate was prescribed with reference to –</p> <ul style="list-style-type: none">• The London Inter-Bank Offer Rate (LIBOR) of the relevant foreign currency.• Credit rating of the AE assigned by CRISIL.		<p>Safe Harbour interest rate is now prescribed with reference to –</p> <ul style="list-style-type: none">• Alternative reference rates SOFR, EURIBOR, SONIA, TORF, BBSW and SORA.• Credit rating of the AE assigned by a SEBI registered and RBI accredited credit rating agency.• Categorized loan advancements to associated enterprises, with markups ranging from 150 to 600 basis points, based on whether the total amount exceeds INR 2.5 billion.

AMENDMENTS IN SAFE HARBOUR RULES, 2023

	OLD RULES	AMEND MENT 2023	NEW RULES
Reference Rate	6 months LIBOR of the relevant foreign currency as on 30th September of the relevant previous year	USD Euro UK Pound Sterling JPY AUD SGD	6months SOFR+45 bps 6months EURIBOR 6months SONIA+30 bps 6months TORF+10 bps 6months BBSW 6months SORA+45 bps

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances								
Advancing of intra-group where the amount of loan is denominated in foreign currency.	The interest rate of transaction is not less than the reference rate of the relevant foreign currency as on 30th September of the relevant previous year plus- where loan amount does not exceed 250crore rupees								
	<table><tr><th>Credit Rating of AE</th><th>Safe Harbour Rate</th></tr><tr><td>AAA to A</td><td>Reference Rate + 150 basis Points</td></tr><tr><td>BBB- to BBB+</td><td>Reference Rate + 300 basis Points</td></tr><tr><td>BB to B to C to D and NA</td><td>Reference Rate + 400 basis Points</td></tr></table>	Credit Rating of AE	Safe Harbour Rate	AAA to A	Reference Rate + 150 basis Points	BBB- to BBB+	Reference Rate + 300 basis Points	BB to B to C to D and NA	Reference Rate + 400 basis Points
Credit Rating of AE	Safe Harbour Rate								
AAA to A	Reference Rate + 150 basis Points								
BBB- to BBB+	Reference Rate + 300 basis Points								
BB to B to C to D and NA	Reference Rate + 400 basis Points								

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances
Advancing of intra-group where the amount of loan is denominated in foreign currency.	The interest rate of transaction is not less than the reference rate of the relevant foreign currency as on 30th September of the relevant previous year plus, - where loan amount exceeds 250crore rupees

EXAMPLE OF SAFE HARBOUR RATE FOR INTRA GROUP LOAN IN FOREIGN CURRENCY

A company advances a loan of 5 million USD (equivalent to Rs 42.5 crore, which is below 250crore rupees limit) to its associated enterprise. The associated enterprise has been assigned a credit rating of AA.

Therefore, the Safe Harbour rate for this transaction will be:-

OLD RULES	AMENDED RULES, 2023
<p>Safe Harbour Rate =</p> <p>6months USDLIBOR + 150 bps</p>	

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances
Providing corporate guarantee	The commission or fee for the eligible international transaction must be declared at a rate of not less than 1% on the guaranteed amount.
Provision of contract research and development services wholly or partly relating to software development	The operating profit margin in relation to operating expense incurred is not less than 24% if the aggregate transaction value is up to 200 crore rupees.
Provision of contract research and development services wholly or partly relating to generic pharmaceutical drugs	The operating profit margin in relation to operating expense incurred is not less than 24% if the aggregate transaction value is up to 200 crore rupees.

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances
Provision of knowledge process outsourcing services	<p>International transaction under 200crore rupees and the operating profit margin in relation to operating expense is -</p> <ul style="list-style-type: none">• not less than 24% and the Employee Cost in relation to the operating expense is at least 60%.• not less than 21 % and the Employee Cost in relation to the operating expense is 40%. or more but less than 60%.• not less than 18% and the Employee Cost in relation to the operating expense does not exceed 40%.

ELIGIBLE ASSESSEES FOR SHR

Safe Harbour in case of international transactions

Specified International transactions	Circumstances
Manufacture and export of core auto components	The operating profit margin in relation to operating expense incurred is not less than 12%
Manufacture and export of non-core auto components	The operating profit margin in relation to operating expense incurred is not less than 8.5%
Receipt of low value-adding intra-group services	International transactions under ten crore rupees with a markup up to 5% require accountant certification on cost pooling, excluding certain costs, and the reasonableness of cost allocation keys used by the overseas associated enterprise.

PROCEDURE OF APPLYING FOR SAFE HARBOUR

- 1** The assessee must submit Form No. 3CEFB to the AO by the due date for the return of income, including the submission of the return of income by the same due date.
- 2** The AO verifies the eligibility of the assessee and the specified transaction, issuing a notice for additional information or documents in case of doubts.
- 3** The AO, within a three-month timeframe, declares the option invalid if the assessee fails to provide necessary information, is deemed ineligible, the specified transaction is ineligible, or the tariff is not in accordance with Rule 10THC(2).
- 4** The assessee, dissenting AO's order, files objections with PCIT/CIT/PDIT/DIT within 15 days.
- 5** The PCIT/CIT/PDIT/DIT, after hearing the assessee, issues orders within two months, and if no order is issued in time, the assessee's option is considered valid.

BENEFITS OF SAFE HARBOR RULES

Advance awareness of acceptable profit or price ranges for Safe Harbour Rules (SHR) eligibility

Automatic approvals and self-assessment procedures

Mitigation of Litigation Risks that fosters cooperation between Taxpayers and Revenue Authorities

Ease in compliance

Reduction in compliance cost

CONCLUSION



- **Safe Harbour rules offer a predetermined set of conditions for accepting transfer prices, reducing disputes between taxpayers and revenue authorities.**
- **Amendments have expanded Safe Harbour coverage to include a broader range of transactions, including intra-group loans in foreign currencies.**
- **Specific thresholds and reference interest rates have been introduced to align with international standards and address practical challenges.**
- **These changes aim to promote transparency, reduce compliance costs, and foster a conducive environment for international trade and investment.**

THANK YOU

Water and Shark refers to global organization, and may refer to one or more member firm of Water and Shark International Inc. (WASII). The views or opinions represented in this presentation belong to the individuals only, these do not reflect the views of the firm. The views and opinions expressed in the presentation should not be construed as a professional advice unless explicitly stated.