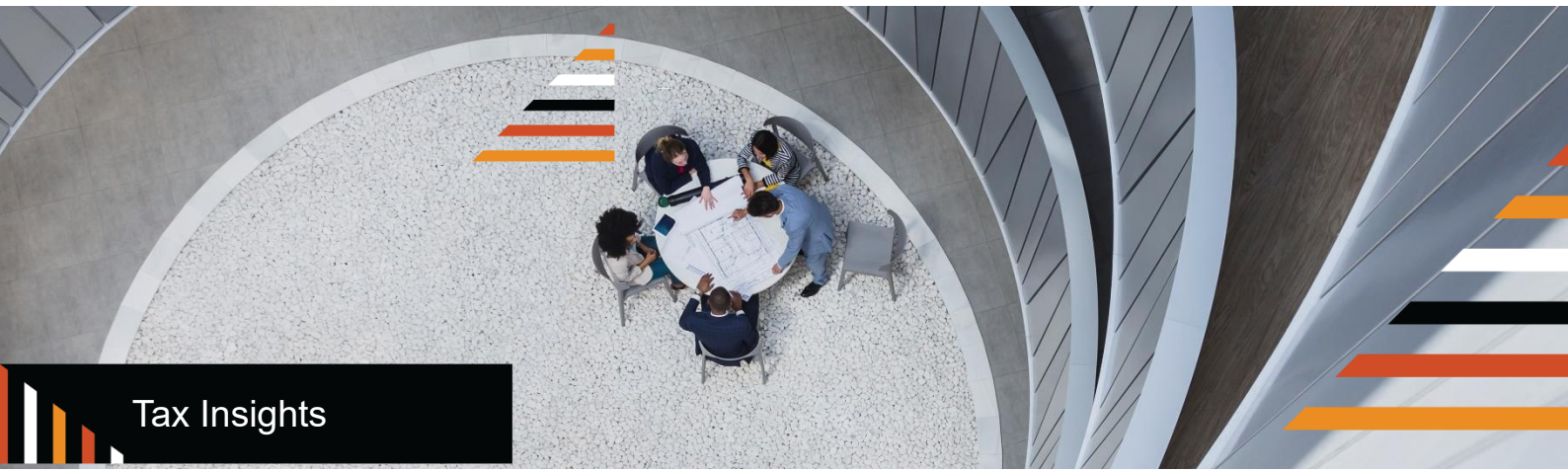

21 December 2023

CBDT amends Safe Harbour Rules

In brief

The Central Board of Direct Taxes (CBDT) has recently amended the Safe Harbour Rules for international transactions, i.e. rules 10TA and 10TD of the Income-tax Rules, 1962 (the Rules), *vide* a notification[1]. These latest amendments are with respect to the definition of operating expense and operating revenue and the scope of intra-group loan transactions that will be covered within the ambit of the Safe Harbour Rules. The amendments will come into force from 1 April 2024.

In detail

The below table summarises these latest amendments along with our observations on the same.

Particulars	Rule amended	Position before the amendment	Position after the amendment	Observations
Operating expense and revenue definition				
Operating expense and revenue definition	Rule 10TA	Loss or income on transfer of assets or investments was excluded from the scope of operating expense or revenue, respectively.	Loss or income on transfer of assets on which depreciation is included in the operating expense is now included within the scope of operating expense or revenue, respectively.	Earlier, loss or income on transfer of any assets [depreciable or non-depreciable] was excluded from operating expense or revenue, respectively. Now, loss or income on transfer of those assets on which depreciation was included in the operating expense is included within the scope of operating expense or revenue, respectively.

[1] Notification No. 104/2023-Income Tax dated 19 December 2023

Particulars	Rule amended	Position before the amendment	Position after the amendment	Observations
Intra-group loan transaction				
Intra-group loan definition	Rule 10TA	• Recipient should be a non-resident wholly owned subsidiary. • Definition of intra-group loan under rule 10TA of the Rules covered only loans sourced in Indian Rupees, although the Safe Harbour interest rates prescribed under rule 10TD of the Rules covered intra-group loans denominated in both Indian Rupees and foreign currency.	• Recipient should 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.	• The Safe Harbour Rules have now been extended to cover loans given to any non-resident AE that may not be wholly owned subsidiaries. • Rule 10TA of the Rules seems to have been rationalised to align with rule 10TD of the Rules, which prescribes the Safe Harbour interest rate for both loans denominated in Indian Rupees as well as in foreign currency.
Safe Harbour interest rate for intra-group loan denominated in Indian Rupees	Rule 10TD	Safe Harbour interest rate was prescribed based on the credit rating of the AE assigned by CRISIL.	Safe Harbour interest rate is now prescribed based on credit rating of the AE assigned by a credit rating agency that is registered under Securities and Exchange Board of India (SEBI) and accredited by Reserve Bank of India (RBI). Moreover, it has been clarified that, where the AE has only one credit rating, then such rating is to be adopted. If the AE has a credit rating from more than one credit rating agency, then the least of such ratings will be adopted.	Earlier, only a CRISIL-assigned credit rating of the AE was recognised for the purpose of Safe Harbour. Post the amendment, credit ratings assigned by any SEBI-registered and RBI-accredited credit rating agency will be recognised for the purpose of Safe Harbour.
Safe Harbour interest rate for intra-group loan denominated in foreign currency	Rule 10TD	Safe Harbour interest rate was prescribed with reference to – 1) The London Inter-Bank Offer	Safe Harbour interest rate is now prescribed with reference to – 1) Alternative reference rates (Secured Overnight Financing rate [SOFR],	With the cessation of LIBOR, the notification of alternative reference rates (e.g. SOFR,

Particulars	Rule amended	Position before the amendment	Position after the amendment	Observations
		Rate (LIBOR) of the relevant foreign currency. 2) Credit rating of the AE assigned by CRISIL.	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]); 2) Credit rating of the AE assigned by a SEBI-registered and RBI-accredited credit rating agency. Moreover, it has been clarified that, where the AE has only one credit rating, then such rating is to be adopted. If the AE has a credit rating from more than one credit rating agency, then the least of such ratings will be adopted. 3) Separate categorisation, where the loan advanced to the AE including loans to all AEs exceeds and does not exceed a sum equivalent to INR2.5bn, with a markup ranging from 150 basis points to 600 basis points.	EURIBOR, SONIA, TORF, BBSW and SORA) was a necessary amendment. Moreover, only a CRISIL-assigned credit rating of the AE was earlier recognised for the purpose of Safe Harbour. Post the amendment, credit ratings assigned by any SEBI-registered and RBI-accredited credit rating agency will be recognised for the purpose of the Safe Harbour.

The takeaways

The rationalisation of the Safe Harbour Rules is certainly a welcome development for the taxpayer community in India. Over the years, several representations have been made to the government to structurally reform the Safe Harbour regime by expanding its scope and rationalising the margins prescribed for various transactions. It is heartening to note that the government has considered the recommendation of expanding the scope of the Safe Harbour Rules to cover inter-company loans given to any non-resident AE rather than restricting it only to loans given to non-resident wholly owned subsidiaries. While these amendments are a step in the right direction, there is still room to make the Safe Harbour Rules more attractive by rationalising the profit margins and removing the turnover thresholds for eligibility of the Safe Harbour.

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