



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
CENTRAL BOARD OF DIRECT TAXES
FOREIGN TAX & TAX RESEARCH DIVISION

8th Floor, C Wing,
Hudco Vishala Building, 14,
Bhikaji Cama Place, New Delhi
F.No.500/139/2012-FTD-I

To,
All CCIT(CCAs)

Sub: Safe Harbour Rules – Immediate actions required including report from all Assessing Officers (AOs) on details of Form 3CEFA received by them -reg

In order to apprise the CCIT(CCAs) about the provisions of Safe Harbour Rules as notified by the Board vide SO 2810 (E) on 18th September 2013, Chairperson, CBDT held a video conference with CCIT(CCAs) New Delhi, Mumbai, Kolkata, Bangalore, Ahmedabad, Hyderabad, Chennai, Pune, Chandigarh and DGIT (International Taxation) on 17th December at 10.30 am.

2. The following issues were discussed during the video conference:

- Chairperson, CBDT provided a summary of Rules 10TA to 10TG relating to Safe Harbour prescribed under Section 92CB of the Income-tax Act. It was informed by the Chairperson that Safe Harbour options in Form 3CEFA would have been filed by 30th November, 2013 and that all CCIT(CCAs) should ensure that the Assessing Officers (AOs) carefully verify and provide in writing to the Board the details of all Form 3CEFA received by them.
- JS (FT&TR-I) explained that the Safe Harbour option in Form 3CEFA would have been filed in paper format with the AOs, and should not be confused with Form 3CEB (detailing International Transactions) which is filed electronically. He pointed out that under the Rules, the AO is required to examine the form and decide within 2 months from the end of the month in which the option was filed, as to whether to

accept the Safe Harbour option or to make a reference to the TPO. If no action is taken within this period by the AO, the Safe Harbour option will be considered as having been accepted, and may then remain valid for 5 years.

- JS-FT&TR-I clarified that for minor defects in Form 3CEFA the AO can provide an opportunity to the taxpayer to rectify the same. However, the statutory time limit of 2 months provided in Rule 10TE (14)(i) cannot be exceeded by the AO under any circumstances.
- JS-TPL-I explained that the AO is required to verify the eligibility of the assessee and the international transactions. He also stated that as per Rule 10TF, Safe Harbor Rules will not apply to eligible international transactions entered into with an associated enterprise located in any country or territory notified under Section 94A, for example Cyprus, or in a no tax or low tax country or territory as defined in the Rules.
- Director (APA) stated that the AO should take note of those cases where the taxpayer has opted for Safe Harbour but has reported rates or margins less than the Safe Harbour rates or margins. In such cases, the income is to be computed on the basis of the Safe Harbour rates or margins only.
- Chairperson, CBDT and JS (FT&TR-I) further emphasized that as stated clearly in the Rules, the Safe Harbour rates or margins specified therein are not to be considered as a benchmark by the AO or TPO in cases not covered by the Safe Harbour Rules. In cases where assessee has not opted for Safe Harbour or the option has not been found to be valid, and a regular transfer pricing audit is considered necessary, such transfer pricing audit will be carried out without regard to the Safe Harbour rates or margins.

3. I am directed to request that the above issues and directions of the Chairperson, CBDT may kindly be brought to the notice of all concerned officers in your region. In particular, I am directed to request that all AOs may be required to ascertain and identify all Safe Harbour options filed with them in Form 3CEFA and furnish a certificate to this effect to the concerned CIT. Details of the options filed may please be forwarded to JS (FT&TR-I), CBDT by 27.12.2013 specifying the following:

- Name, address, PAN and Assessing Officer of the taxpayer filing Form 3CEFA
- Details of eligible international transaction for which benefit under Safe Harbour Rules has been opted
- A soft copy of all 3CEFA forms may be emailed to ashish.heliwal@nic.in

4. This letter is issued with the prior approval of the Chairperson, CBDT

Yours faithfully,

Ashish Heliwal

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