

SAFE HARBOUR RULES

In order to reduce the increasing number of transfer pricing audits and prolonged disputes, section 92CB provides that determination of arm's length price under section 92C or Section 92CA shall be subject to Safe Harbour rules. Section 92CB(2) empowers the CBDT to prescribe safe harbour rules.

Safe Harbour means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

KEY NOTES:

1. Assessee has to make an application to the Assessing Officer in prescribed form that he wants to adopt Safe Harbour Rules.
2. The Assessing Officer will accept the application of the assessee and then assessee will be governed by Safe Harbour Rules.
3. **Safe Harbour Rules shall not be applicable in respect of eligible international transaction entered into with an associated enterprise located in any country or territory notified under section 94A as notified jurisdictional area or in a no tax or low tax country or territory. "No tax or low tax country or territory" means a country or territory in which the maximum rate of income tax is less than 15%.**
4. **Section 92D requiring every person who has entered into an international transaction to keep and maintain the prescribed information and documents and section 92E requiring such person to obtain a report from an accountant and furnish such report on or before the specified date in prescribed form and manner, shall apply irrespective of the fact that the assessee exercises his option for safe harbour in respect of such transaction.**
5. **The Finance Act, 2020 provides that Safe Harbour Rules will be prescribed for:**
 - (i) **computation of income reasonably attributable to operation carried out in India in case of a Non-Resident in case of a business of which all the operations are not carried out in India.**
 - (ii) **computation of income of permanent establishment in India in case of a Non-Resident having permanent establishment in India.**