

- The CBDT vide notification no. 104/2023 dated 19th December 2023 has amended Rule 10TA (definitions for Safe Harbour Rules) and Rule 10TD (safe harbour) of Safe Harbour Rules (SHR)
- These amendments are in relation to definition of operating expense / revenue under SHR and intra group loans and will be effective from 01st April 2024.

Change in definitions of operating expense and operating revenue



- The change in definitions of operating expenses and operating revenue have been amended as below

| Definition | Existing | Amended |
|--------------------------------|---|---|
| Operating Expense – Exclusions | Earlier loss on transfer of assets or investments was not considered as operating in nature | Now only the loss on transfer of assets or investment, other than assets, on which depreciation is included in the operating expense shall not be considered as operating in nature |
| Operating Revenue - Exclusions | Earlier income on transfer of assets or investments was not considered as operating in nature | Now only the income on transfer of assets or investment, other than assets, on which depreciation is included in the operating expense shall not be considered as operating in nature |



Amendments in relation to Intra Group Loans



- The scope of SHR in relation to intra group loans is expanded to cover all Associated Enterprises (AEs) as compared to Non-Resident wholly owned subsidiary (WOS) earlier.
- Apart from above, the SHR in relation to eligible international transaction of advancing intra-group loans in foreign currency have been amended as below:

| Existing | | Amended | |
|---|---------------------------------------|---|------------------------|
| CRISIL Credit Rating of AE | Safe Harbour Rate | Credit Rating of AE | Safe Harbour Rate |
| AAA to A | Reference Rate+150 basis points (bps) | For loan advanced to all AEs does not exceed INR 250 crore as on 31st March of relevant previous year | |
| BBB- to BBB+ | Reference Rate+300 bps | AAA to A- | Reference Rate+150 bps |
| BB to B | Reference Rate+450 bps | BBB+ to BBB- | Reference Rate+300 bps |
| C to D | Reference Rate+600 bps | BB+ to D or Not Available | Reference Rate+400 bps |
| <i>Not Available (where loan does not exceed INR 100 crore as on 31st March of the relevant previous year)</i> | Reference Rate+400 bps | For loan advanced to all AEs does exceed INR 250 crore as on 31st March of relevant previous year | |
| | | AAA to A- | Reference Rate+150 bps |
| | | BBB+ to BBB- | Reference Rate+300 bps |
| | | BB+ to B- | Reference Rate+450 bps |
| | | C+ to D or Not Available | Reference Rate+600 bps |
| Existing Reference Rate | | Amended Reference Rate | |
| 6M LIBOR of the relevant foreign currency as on 30 th September of the relevant previous year | | Currency | Reference Rate* |
| | | USD | 6M SOFR+45 bps |
| | | Euro | 6M EURIBOR |
| | | UK Pound Sterling | 6M SONIA+30 bps |
| | | JPY | 6M TORF+10 bps |
| | | AUD | 6M BBSW |
| | | SGD | 6M SORA+45 bps |

* As on 30th September of the relevant previous year



- **Example of Safe Harbour Rate for Intra Group Loan in foreign currency:** The Safe harbour Rate for USD 5 Million (equivalent INR 42.5 crore) loan advanced to AE having CRISIL credit rating of AA as per the earlier rules would be 6M USDLIBOR as on 30th September + 150 bps, whereas as per the amended rules, the safe harbour rate would be 6M SOFR as on 30th September + 45 bps + 150 bps.

Credit Rating

- Reference to **CRISIL** for credit rating of the AE has been omitted in case of eligible international transaction of advancing intra-group loans for Safe harbour circumstances. Moreover, a new definition of credit rating has been incorporated. This now refers to the credit rating assigned to the AE by a credit rating agency that is registered with SEBI (Securities and Exchange Board of India) and accredited by the Reserve Bank of India (RBI).
- Where the AE has only one credit rating then such rating shall be taken as its credit rating and where the associated enterprise has a credit rating from more than one such credit rating agency, then the least of such ratings shall be taken as its credit rating.

