

## Safe harbour rules for transfer pricing documentation: Notified for specified domestic transactions of electricity companies run by the government

10 February 2015



The Central Board of Direct Taxes (CBDT) has released a new set of simplified Transfer Pricing (TP) Documentation Rules for domestic transactions of electricity companies owned by the government. In continuance with recent attention on addressing taxpayer's woes, the government has notified the Safe Harbour Rules (SHR) for eligible specified domestic transactions (SDT) of the electricity companies owned by the government vide notification dated 4 February 2015. These simple TP documentation rules will have to be followed by Government companies engaged in the business of generation, transmission or distribution of electricity, instead of the mandatory documentation prescribed currently under Rule 10D(1) of the Income-tax Rules, 1962.

### The key highlights of these SHR are as under:

1. The SHR provide that where an **eligible assessee** has entered into an **eligible specified domestic transaction** in any previous year, it would be required to maintain only the following documentation if it exercises the option to adopt these SHR.

Eligible SDT	Safe Harbour Circumstances
Eligible SDT undertaken by eligible assessee comprising of;	The tariff in respect of supply of electricity, transmission of electricity, wheeling of electricity, as the case may be, is determined by the Appropriate Commission* in accordance with the provisions of the Electricity Act, 2003 (36 of 2003).
(i) Supply of electricity by a generating company,	
(ii) transmission of electricity, or	
(iii) wheeling of electricity	

\*Appropriate Commission is defined in the Electricity Act, 2003 as “‘*Appropriate Commission*’ means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in Section 83, as the case may be”

2. The Rules define 'eligible assessee' and 'eligible SDT' as under:

- An '*eligible assessee*' means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 10 THC, and is a government company engaged in the business of generation, transmission or distribution of electricity.
- "*eligible SDT*" means a specified domestic transaction undertaken by an eligible assessee and which comprises of :
  - (i) supply of electricity by a generating company; or
  - (ii) transmission of electricity; or
  - (iii) wheeling of electricity.

The transfer price declared by the eligible assessee in respect of such eligible SDT shall be accepted by the income-tax authorities, if it is in accordance with the specifications of the rule.

3. The above SHRs specify the following documentation to be maintained by Government Electricity companies (Assessee), once they adopt the option by filing of prescribed Form No. 3CEFB:

- (i) a description of the **ownership structure** of the assessee enterprise with details of shares or other ownership interest held therein by other enterprises;
- (i) a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated enterprises with whom the assessee has transacted;
- (ii) the nature and terms (including prices) of SDT entered into with each associated enterprise and the quantum and the value of each such transaction or class of such transaction;
- (iii) a record of proceedings if any before the regulatory commission and orders of such commission relating to the specified domestic transaction;
- (iv) a record of the actual working carried out for determining the transfer price of the specified domestic transaction;

(vi) the assumptions, policies and price negotiations, if any, which have critically affected the determination of the transfer price;

(vii) any other information, data or document, including information or data relating to the associated enterprise, which may be relevant for determination of the transfer price.

4. The Rules state that, for the purpose of exercising the SHR option, the assessee shall have to furnish a **Form 3CEFB (Form)**, to the Assessing Officer (AO) on or before the due date for filing the return of income.

5. The above SHRs shall apply for each assessment year in which the eligible assessee has entered into an eligible SDT and the option exercised by the said assessee is treated to be validly exercised. Further, the assessee also has an option to benefit from these SHRs for the AY 2013-14 and AY 2014-15 by filing the prescribed Form on or before the 31 March 2015.

6. The AO is empowered to analyse whether the assessee exercising the option is an *eligible assessee* and the transaction for which the option is exercised is an *eligible SDT*. The AO may accept or reject the taxpayer's option, after giving an opportunity for hearing and by a reasoned order within a period of three months.

7. The taxpayer shall have a right to file an objection, with the jurisdictional Principal Commissioner or the Commissioner or the Principal Director or the Director, **within fifteen days** of receipt of the order of the AO, against adverse finding regarding the eligibility.

8. The Rules provide that the jurisdictional Principal Commissioner or the Commissioner or the Principal Director or the Director, shall, after providing an opportunity of being heard to the assessee, pass appropriate orders in respect of the validity or otherwise of the option exercised by the assessee, **within a period of two months**.

The assessee will however be required to file the Accountant's report in Form No. 3CEB even where it opts to be governed by the SHR.

## Our comments

This appears to be the first set of SHRs prescribed for Domestic Transfer Pricing, though only for Government electricity companies as of now. These relaxed documentation requirements will help in saving the efforts that would have been spent by these companies in analysing and documenting arm's length compliance for their inter-company transactions, and divert their efforts to more developmental avenues leading to economic growth. In light of the fact that, the documentation for SDTs shall be tested from next year onwards by the Indian Revenue Authorities, the CBDT may consider issuing such relaxation from documentation rules for private players in the power sector as well as other industry sectors where pricing is regulated e.g. mutual funds where the expenditure charged to the mutual funds scheme including the management fee paid to the asset management companies is anyways regulated by SEBI.



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