Govt likely to relax transfer-pricing regime, make eligibility rules flexible

Move aimed at making safe-harbour rules more attractive and practical

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The government is likely to relax India's transfer-pricing regime, which concerns taxing payments by multinationals, making flexible its rules for eligibility under it and reviewing some of its provisions, according to a government official.

The proposed changes are expected to be notified before the Budget in February is presented.

Transfer-pricing rules govern how cross-border transactions between related entities of multinationals are priced for taxing to prevent profit shifting.

Safe-harbour rules, which will be reviewed, are an optional arrangement that allows eligible taxpayers to avoid detailed transfer-pricing audits by accepting pre-notified profit margins.

At present, safe-harbour rules apply to specified transactions with transaction values up to a predefined level.

The proposed changes are expected to be notified under the new Income-Tax Act, which is scheduled to come into effect on April 1, the official said.

"The review is aimed at making the safe-harbour rules attractive, realistic, and practical, so that they serve their purpose of reducing disputes and improving certainty," a government source said.

An email sent to the finance ministry remained unanswered till the time of going to press.

The rules concerned cover transactions on software development, information technology (IT)-enabled services, knowledge process outsourcing, and contract research and development with a value up to ₹300 crore, which is likely to be increased.

In such cases, the minimum profit margin required is 17-24 per cent of the operating cost, which is likely to be reduced.

In March last year, the government had raised the turnover threshold to ₹300 crore from ₹200 crore.

The official quoted earlier said there had been a low take-up even after the threshold revision, prompting the government to go for further relaxation.

Kunj Vaidya, partner with PwC, said the eligibility conditions required revising and prescribed markups reduced to allow even large companies to opt for the safe-harbour regime, especially as the advance-pricing agreement (APA) programme and tribunals are increasingly congested.

Large taxpayers, the expert said, are often pushed towards litigation or APAs due to restrictive safe-harbour conditions, despite seeking certainty.

Chetan Daga, partner, AdvantEdge Consulting, said: "Given the increased global competitiveness and the general profitability trends observed in the services and automobile industries, the minimum safe-harbour margin expected is quite high and is deterring small and medium taxpayers from opting for it. It is crucial that the margins are periodically reviewed, rationalised, and aligned with the business environment to encourage more taxpayers to opt for a safe harbour regime."

According to Vaidya, the government can provide a window to move pending cases from the APA programme or litigation to the safe-harbour route, with a rationalised framework potentially serving as an accelerated APA option for eligible taxpayers.

Rationalising rules

- At present, safe-harbour rules apply to specified transactions with transaction values up to a predefined level
- Presently, the safe harbour rules apply to certain specified transactions with transaction values up to a predefined level
- The proposed changes may be to be notified under the new Income-tax Act