



dhruva

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# TRANSFER PRICING ALERT

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Transfer Pricing Reforms –  
Focus on SHR and APA

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# Indian Transfer Pricing Developments: Focus on SHR and APA

The Union Budget 2026 marks an important change in India’s Transfer Pricing (‘TP’) landscape, especially for the Information Technology (‘IT’) / IT enabled services (‘ITeS’) sector and the growing Global Capability Centre (‘GCC’) ecosystem. The announcements show a clear move towards reducing disputes and bringing more certainty, consistency, and efficiency in TP processes. Key changes introduced vide the Income-tax Rules, 2026 (‘the Rules’), pursuant to the proposals announced in the Union Budget 2026 include:

- Simplification of the Safe Harbour Rules (‘SHR’);
- Introduction of a time-bound Advance Pricing Agreement (‘APA’) process;
- Better clarity on assessment timelines;
- Introduction of Form 48<sup>1</sup>, which significantly increases TP disclosure requirements and shifts compliance from detailed narrative reporting to more standardised, data-driven reporting; and
- Procedural guidance on multi-year Arm’s Length Price (‘ALP’) determination, as introduced in the Finance Act, 2025, allowing taxpayers to opt for ALP assessment of specified transactions for a period of three years.

This alert outlines the key TP changes relating to the SHR and APA and examines their practical implications while evaluating each of these options.

## SAFE HARBOUR RULES

### Unified Category for IT Services:

The Safe Harbour regime has covered routine transactions such as software development, ITeS, Knowledge Process Outsourcing (‘KPO’), contract R&D, and certain financial transactions (i.e., intra-group loans and corporate guarantee). However, high margins and fragmented service categories limited taxpayer’s adoption for SHR. The Rules seek to directly address these concerns, as outlined below:

Feature	Existing Framework (Applicable for FY 2025-26)	New Framework [Applicable for Tax Year (‘TY’) 2026-27]
<b>Service Categories</b>	Separate categories for:  (1) Software development services, (2) ITeS, (3) KPO and (4) Software R&D	All services consolidated into a single category of “IT Services”
<b>Revenue Threshold</b>	Upto INR 300 crores (shall be tested annually)	Upto INR 2,000 crores. Eligibility to be tested for the 1st of the 5 consecutive TYs
<b>Safe Harbour</b>	Ranging from 17% to 24%	Uniform safe harbour margin of 15.5% on

<sup>1</sup> Form 3CEB which will be replaced by Form 48 (applicable from tax year commencing on or after April 1, 2026)

Feature	Existing Framework (Applicable for FY 2025-26)	New Framework [Applicable for Tax Year (‘TY’) 2026-27]
<b>Margins</b>		operating costs
<b>Period</b>	Annually	5 consecutive TYs

An entity in India providing IT services to its Associated Enterprise (‘AE’) may opt for SHR where it **assumes only insignificant risks** and meets the prescribed Functions, Assets, and Risk (‘FAR’) profile.

FAR Element	Key Parameters for evaluating Safe Harbour <sup>2</sup>
<b>Functions (F)</b>	<ul style="list-style-type: none"> <li>Core entrepreneurial and strategic decisions (e.g., product conceptualization, design direction, business strategy) undertaken by the foreign AE;</li> <li>Indian entity performs execution-oriented or support services under supervision and control of the foreign AE.</li> </ul>
<b>Assets (A)</b>	<ul style="list-style-type: none"> <li>Funding provided by the overseas group entity</li> <li>Critical tangible assets and key intangibles, including intellectual property, owned and controlled by the foreign AE</li> </ul>
<b>Risks (R)</b>	<ul style="list-style-type: none"> <li>Indian entity does not assume economically significant risks, including: <ul style="list-style-type: none"> <li>Market and pricing risk</li> <li>Credit risk</li> <li>Capacity utilization risk</li> <li>Product / IP risk</li> <li>Entrepreneurial or investment risk</li> </ul> </li> </ul>

#### Separate procedures for non- IT and IT services:

Particulars	Non - IT Services	IT Services
<b>Safe Harbour Period</b>	Shall continue for block of 3 TYs. However, application needs to be filed each year.	Shall continue for block of 5 consecutive TYs (Safe Harbour rates shall apply for block of 3 TYs unless modified <sup>3</sup> )
<b>Form to be filed</b>	Form 49	Form 49
<b>Time Limit</b>	On or before the return filing due date of that TY	On or before the return filing due date of that TY
<b>Authority with whom Form is filed</b>	Assessing Officer (‘AO’)	Director General of Income-tax (Systems)
<b>Approval Process</b>	To be obtained by Tax Authorities every year	Automated rule-based process for block of 5 years
<b>Opportunity to rectify defects</b>	Not specifically provided	Taxpayer is allowed to remove defects before rejection
<b>Time limit for acceptance / rejection</b>	Defined timelines for AO, Transfer Pricing Officer (‘TPO’) and Commissioner (2 months from end of relevant month)	Within 2 months from the exercise of Option
<b>Consequence of no action by tax authority</b>	Safe Harbour option deemed Valid	Not specifically provided
<b>Withdrawal of option</b>	Not specifically covered	Allowed, but re-entry is not permitted up to expiry of 5 consecutive tax years for which application was made. Further,

<sup>2</sup> As per Rule no. 87(3) of the Rules

<sup>3</sup> Rule 89(4) of the Rules

Particulars	Non - IT Services	IT Services
		withdrawal shall not be made after 6 months from the end of TY 1.
<b>Annual Statement</b>	Not required	To be filed for the next 4 years by accountant
<b>Signing Authority</b>	Person filing return of income (i.e., Director or MD)	CEO / Chairman / MD

### New category has been introduced under SHR:

- (1) **Data Centres:** SHR have expanded the scope of eligible transactions to include provision of data centre services, with a Safe Harbour margin of 15%.
- (2) **Custom Bonded Warehouse:** Safe Harbour margin of 2% of gross receipt has also been introduced for non-residents undertaking component warehousing in custom bonded warehouses in India, particularly for “specified electronic goods”.

### Rationalized definition “accountant”:

The definition of ‘accountant’ has been rationalized for the purposes of SHR, thereby enabling more local firms to issue certificates as required under these regulations.

### DHRUVA COMMENTS

- **Interpreting “Insignificant Risk (‘IR’)”:** A key requirement under SHR is that actual conduct of Indian entity should operate as a limited-risk service provider rather than relying on contractual terms, ensuring it performs routine, execution-focused functions without assuming significant risks. However, while demonstrating a limited risk profile which supports SHR eligibility, it is important to carefully evaluate Permanent Establishment (‘PE’) implications, as such characterization could inadvertently create a taxable presence for the foreign associated enterprise if not properly evaluated.
- **Definition of “information technology services”:** Although IT services are covered under Rule 87, the Rules do not specifically include services such as AI, cybersecurity, data analytics, IT infrastructure management, systems integration and implementation, application management, and IT training. As a result, there is no clarity as yet whether companies providing these services would qualify for SHR.
- **Impact of Safe Harbour Margins in Assessment Proceedings:** If a taxpayer earns a margin above the Safe Harbour rate, the TPO may undertake a more detailed FAR analysis, as the additional powers provided to the TPO emphasise determining ALP based on substance and judgment rather than a purely mechanical approach. Additionally, enhanced disclosures in Form 48 such as fixed assets and Employee Stock Optional Plan (‘ESOP’) costs may broaden the operating cost base for mark-up computations, potentially resulting in higher effective margins. Conversely, where a taxpayer’s margin is below the Safe Harbour rate, the TPO may select higher-margin comparables, increasing the likelihood of upward adjustments.
- **Approval process for Taxpayers opting for SHR:** Where a taxpayer opts for the Safe Harbour regime, Form 49 must be filed without an explicit FAR disclosure and is subject to verification by DGIT (Systems) for IT services; however, clarity is awaited on how DGIT (Systems) will assess whether the taxpayer bears only insignificant risks. It also remains unclear how applications will be treated in subsequent years if rejected, including whether taxpayers would be restricted from reapplying for the next five years in the absence of any change in FAR.
- **Safe Harbour and Mutual Agreement Procedure:** Where the transfer price of an eligible international transaction declared by an eligible taxpayer is accepted by the income-tax authorities, the taxpayer will not be permitted to invoke the Mutual Agreement Procedure (‘MAP’) under the applicable Double Taxation Avoidance Agreement (‘DTAA’)<sup>4</sup>. MAP

<sup>4</sup> Rule 93 of the Rules

may still be accessed where a foreign tax authority makes a corresponding adjustment that results in double taxation. In such cases, India's competent authority would participate in MAP discussions but would not alter the Safe Harbour margin; instead, would request the treaty partner to provide correlative relief<sup>5</sup>.

## APA PROGRAMME

The APA mechanism is a prospective TP certainty tool that enables taxpayers to agree in advance with the tax authorities on the arm's length pricing for covered international transactions for a defined period. Following changes have been made in the APA programme.

- **Uniform APA Filing Fee:** A flat fee of INR 20 lakhs applies regardless of transaction value (previously INR 10–20 lakhs based on transaction size).
- **Simplified APA Withdrawal:** Withdrawal now requires only a simple notification to the competent authority; no formal application is needed.
- **Timeline for Completion:** The Rules aim to complete meetings, document submissions, and site visits within 1 year from the end of the FY of filing, wherever it is feasible.
- **Closure of Proceedings:** If an APA is not finalized within the time prescribed from the close of the FY of filing, the Board may close proceedings, after hearing the applicant. As per the Rules time limit for conclusion of Unilateral APA ('UAPA') shall be done as below:

Aspect	Timelines
Other than IT services	3 years from the end of the FY in which the APA application was filed
IT services	2 years from the end of the quarter in which the APA application was filed (with extension of 6 months at taxpayer's request)

- **Rollback Provisions:** If a belated return is filed within the prescribed timeline for a TY, even such year can be considered under rollback application.
- **Enhanced APA Annual Compliance:** Taxpayers must provide detailed line-by-line adjustment calculations, including PLI computation and related adjustments. Critical assumptions, FAR consistency, AE residence, invoicing and credit terms, segmental reporting, and certification, with disclosure of any additional assumptions included in the APA.
- **Renewal via Form No. 54:** A new form has been introduced for APA renewals. It is similar to Form No. 51 used for the original application, with differences mainly in annexure details. Form No. 54 also requests rollback details, allowing renewals to be filed 1–2 years after APA completion.
- **Modified Return Mechanism for AEs Pursuant to APAs:** For APAs entered into on or after 1 April 2026, the Finance Act, 2026 allows AEs to file modified returns limited to the terms of the APA, reflecting the adjusted income. This ensures that both the Indian entity and its overseas AE can report the agreed TP positions, allowing the foreign AE to claim refunds on taxes withheld corresponding to the reduced income. Any foreign tax credits claimed by the AE in its jurisdiction would also need to be considered.
- **Inter-play with SHR:** The CBDT<sup>6</sup> has issued an Office Memorandum introducing an additional "critical assumption" in APAs in light of the revised SHR. This enables taxpayers to opt for Safe Harbour during the APA term; however, where

<sup>5</sup> CBDT MAP Guidelines 2022

<sup>6</sup> F.No. 500/03/2014-APA (Vol. V) dated 24<sup>th</sup> March 2026

such an option is exercised, the APA will cease to apply to the relevant international transaction(s) for that year and the remaining APA period.

For instance, if an APA covers FY 2024–25 to FY 2028–29 and the taxpayer opt for Safe Harbour for FY 2026–27, the APA will not apply to the covered transactions for FY 2026–27 and the subsequent years (i.e., FY 2027–28 and FY 2028–29). Furthermore, this clarification also extends to draft APAs already approved but pending signature, ensuring alignment with the updated regulatory framework.

- **APA related Forms:** The Rules introduced a restructuring of the APA framework, including the substitution and renumbering of prescribed forms, rationalisation of certain procedural requirements and other structural and drafting changes to reporting and processes, which are as under:

IT Rules 1962 (Old)	IT Rules 2026 <sup>7</sup> (New)	Name of Form as per the Income-tax Forms 2026
Form 3CEC	Form 50	Application for Pre-filing Consultation (Form has been simplified to provide lesser details)
Form 3CED/ 3CEDA	Form 51	Application for an APA (Merged APA and Rollback form)
Form 3CEF	Form 52	Annual Compliance Report (Expanded disclosures to include transactions undertaken as per terms of APA)
Form 3CEEA	Form 53	Application for change in book profit pursuant to APA
New Form	Form 54	Application for Renewal of an APA
Form 3CEE	No Form to be filed only intimation	Application for withdrawal of APA

- **APA statistics:** The CBDT has signed a record 219 APAs in FY 2025–26, the highest ever in a single year taking the cumulative total to 1,034 APAs (750 UAPAs and 284 BAPAs)<sup>9</sup>.

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- **Annual Compliance Report ('ACR'):** The requirement to submit the ACR form in four copies has now transitioned to mandatory electronic filing. This would imply that the timeline for completion of the Annual Compliance Audit by the TPO should be six months from the end of the month in which the ACR is filed online, rather than from the date of actual receipt by the officer.
- **Differential Treatment of Belated Returns under Multi-Year Approach ('MYA') and APA Rollback:** The Finance Act, 2025 introduced the concept of MYA, allowing taxpayers to determine the ALP for a block period of three years. However, an issue arises in cases where the income-tax return is filed belatedly, as MYA does not permit opting for block assessment in such situations. In contrast, under the APA rollback provisions, taxpayers may still be eligible to apply for rollback even where the return has been filed late, provided it is filed within the prescribed time limit.
- **Determining MAT<sup>8</sup> Credit Position:** The Finance Act, 2026 has introduced restrictions on MAT credit utilisation with effect from 1 April 2026. The set-off of MAT credit will be allowed only for companies opting for the concessional regime i.e., Section 200 of the Income-tax Act, 2025 (applicable to eligible domestic companies) and Section 201 of the Income-tax Act, 2025 (applicable to eligible domestic manufacturing). Such setting-off of MAT credit would be capped at 25% of annual tax liability. No fresh MAT credit accumulation shall be allowed beyond 31 March 2026. In this backdrop, a snapshot summarizing the changes have been captured below:

<sup>7</sup> Income-tax Rules, 2026

<sup>8</sup> Minimum Alternate Tax

<sup>9</sup> <https://www.incometaxindia.gov.in/documents/d/guest/cbdt-signs-219-advance-pricing-agreements-in-fy-2025-26-pdf>

Particular	Entity availing/ planning to avail concessional rate		Entity not availing concessional rate	
	Pre Amendment	Post Amendment	Pre Amendment	Post Amendment
Provision of MAT Applicable	No	No	Yes	Yes
Utilisation of MAT Credit	No	Yes, credit accumulated up to 31 March 2026, maximum of 25% of tax liability of relevant tax year	Yes	No
Concern for entity applying/ negotiating for APA	Not Applicable	None	Not Applicable	Whether to opt for concessional rate in order to utilize MAT credit, if any

From a practical standpoint, companies should:

- (i) Compute tax liability under normal provisions vis-à-vis tax liability under MAT provisions, up to 31 March 2026 to maximise pre-transition utilization,
- (ii) Evaluate APA impact on normal tax liability for subsequent years, as lower taxable income could slow credit absorption, and
- (iii) Evaluate the risk of stranded credit, given the 25% utilization cap may defer recovery over several years.

**Illustration:** MAT credit of INR 80 million as at 31 March 2026. An APA covering rollback years results in primary adjustments that increase book profits resulting in reduction in MAT credit INR 10 million, leaving INR 70 million credit for utilisation. If Post2026, annual tax liability is INR 40 million for each year, utilisation would be restricted to INR 10 million per year, requiring at least seven years for full absorption. Thus, the revised MAT credit utilization mechanism can potentially result into higher tax cost, despite APA certainty.

# Concluding Remarks

The rationalization of Safe Harbour margins coupled with expanded eligibility, automated processes, and a strengthened APA programme, reflects a clear shift towards a modern and future-ready TP framework. These reforms are expected to simplify compliance, enhance administrative efficiency, and support the continued growth of India's IT/ITeS and GCC ecosystem, thereby reinforcing its position as an attractive investment destination. Overall, the integrated APA and Safe Harbour framework continues to play a pivotal role in reducing TP disputes, enhancing tax certainty, and fostering a stable cross-border tax environment.

For any queries in relation to this Transfer Pricing alert, please feel free to reach out.



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