

Draft Income Tax Rules

Changes to Safe Harbour Rules

February 2026



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Background

The draft Income Tax Rules, 2026 have been released by CBDT recently and are open for feedback from stakeholders and public till 22nd February 2026. As part of the new Rules, significant changes have been proposed to the Safe Harbour (SH) Rules to incorporate the amendments announced in the 2026 Budget, thereby providing clarity around eligibility, forms and procedures. New rule nos. 86-102 will replace the existing Rule nos. 10TA-10TIC.

The key changes in the SH Rules as outlined in the draft rules vis-à-vis the Income Tax Rules, 1962 are captured in the ensuing paragraphs.



Single Form 49 to replace Forms 3CEFA, 3CEFB & 3CEFC

A new Form No. 49 has been introduced as a single, consolidated application for taxpayers to opt for Safe Harbour. This new form replaces the following three forms previously used under the IT Rules, 1962, thereby reducing procedural complexity for taxpayers:

1. Form 3CEFA: SH Application for Eligible international transactions
2. Form 3CEFB: SH Application for Specified domestic transactions
3. Form 3CEFC: SH Application for Eligible business

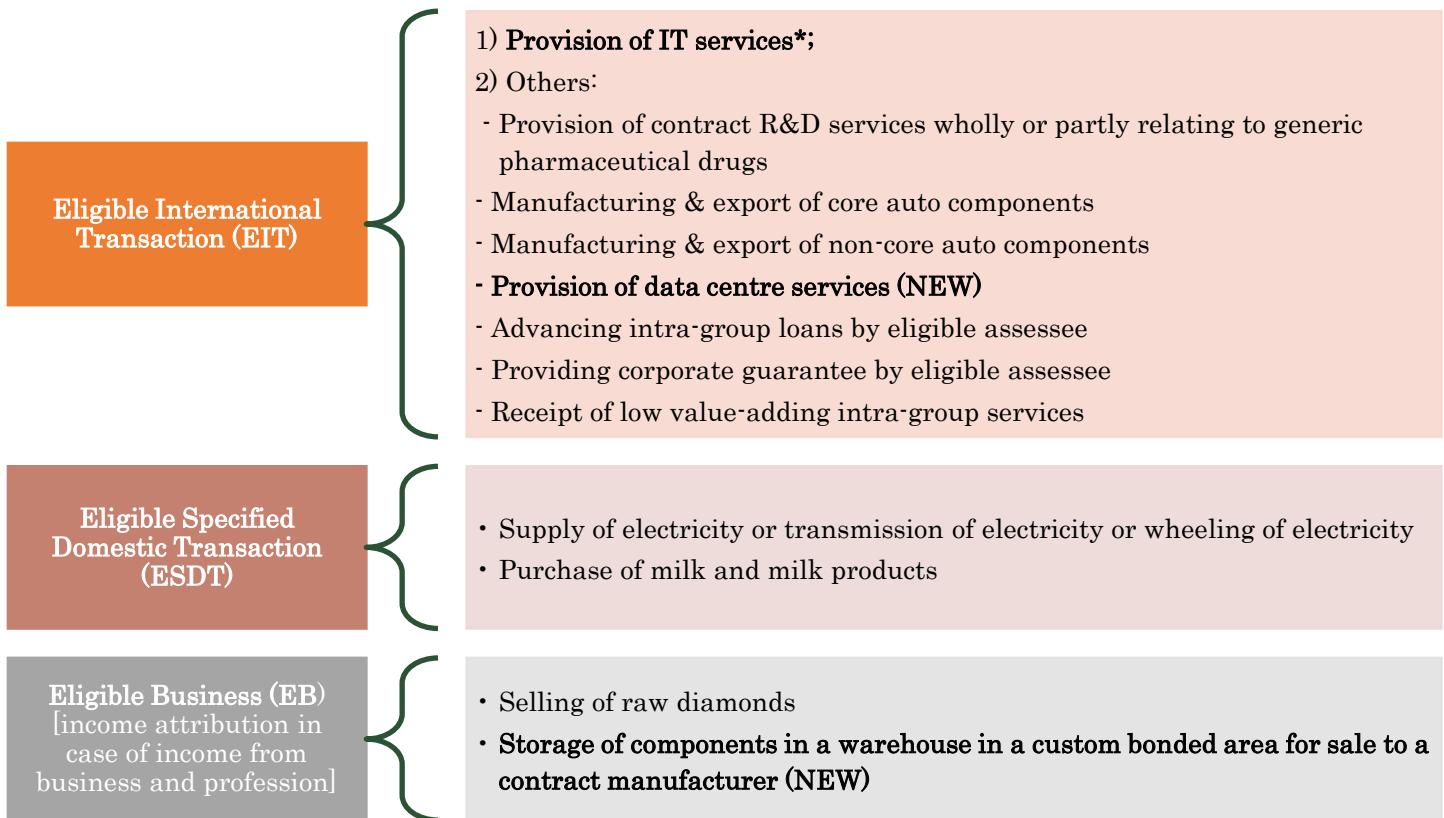
Form No. 49 introduces threshold-based confirmations which were not required under the earlier SH forms, and mandates more structured AE-wise tabular reporting, thereby ensuring updation of relevant fields by taxpayers.

Form No. 49 has to be e-filed with DSC/EVC and verified by the person authorized to file return of income. It is also specified that the form would be pre-filled to the extent possible.

Major Changes:

- **Structural changes** - Unlike the earlier forms which relied on descriptive or transaction-specific disclosures, Form 49 requires standardized, AE-wise tabular reporting
- **Threshold based disclosure** - Form 49 also introduces threshold-based confirmations for specified transactions, which were not explicitly required under the earlier forms.

Under Form no. 49, the transactions for which SH can be opted for have been bucketed into 3 broad categories:



*Common category for Software development, ITeS, KPO & Contract R&D in relation to software development

Changes in Form No. 49

Particulars	Additional requirements
1. IT services	Tax Years for which option is to be exercised to be included
2. Transaction categories	Clubbing of 4 service categories into IT services, inclusion of Data centre services and Eligible business of component storage in bonded warehouses
3. Advancing of intra-group loans	<ul style="list-style-type: none"> • If the loan is in foreign currency, there is a checkbox requirement (Yes/No) to confirm whether the total loan advanced to all AEs exceeds INR 250 crores as on 31st March of the tax year • In cases where credit rating is not available and the loan is in Indian currency, there is a checkbox requirement (Yes/No) to confirm that the total loan advanced to all AEs does not exceed INR 100 crores to determine the eligibility.
4. Provision of Corporate Guarantee	<ul style="list-style-type: none"> • Checkbox requirement (Yes/No) to confirm whether the amount guaranteed exceeds INR 100 crores • Further, AE credit rating and credit rating agency to be disclosed only if amount guaranteed exceeds INR 100 cr.

5. Receipt of low value-adding intra-group services	<ul style="list-style-type: none"> Checkbox requirement (Yes/No) to confirm if the value of transactions including markup $\leq 5\%$ exceeds INR 10 crores, to determine eligibility for SH Additional requirement to upload the accountant's certificate certifying the cost pool allocation Specific requirement to disclose the Date and UDIN of accountant's certificate Amount of EIT excluding mark-up and amount of EIT including mark-up to be separately shown
6. ESDT (Supply of electricity or transmission of electricity or wheeling of electricity)	The old form required details of relevant order of the Appropriate Commission determining the tariff or approving the methodology for determination of the tariff, whereas the new form specifically asks for the date, type and validity of such order
7. ESDT (Purchase of milk and milk products)	<p>Earlier, taxpayers were required to furnish exhaustive details regarding the quantity, rate, and milk-equivalent of dairy products purchased, along with verification of uniform payment to members. Such granular details are no longer required in Form 49.</p> <p>Instead, Form 49 seeks procedural confirmations on whether the procurement rate is fixed based on quality (SNF content) and is independent of milk volume, shareholding, and voting power of the members.</p>
8. Eligible business (sale of raw diamonds and component storage in bonded warehouse)	<p>Confirmation (yes/no) that:</p> <ul style="list-style-type: none"> No further deduction under section 28 to 34, 44 to 49, 51,52, Schedule IX and X has been claimed Written down value of assets is deemed to have been calculated as if the assessee had claimed the depreciation No set off of unabsorbed depreciation under section 33(11) or carried forward loss under section 112(1) has been claimed No set off of loss from other business under section 108(1) or other head under section 109 has been claimed <p>Hence, the new form outlines the mandatory deduction and set-off restrictions applicable when opting for SH for EB. These restrictive provisions are designed to ensure that the profit% of 4%/ 2% is final, preventing taxpayers from further reducing their taxable income through additional claims</p>



New Rule 91 on SH procedure for IT services

A separate, simplified rule has now been introduced exclusively for the SH procedure relating to IT services. Under the earlier framework, the procedural requirements for all eligible international transactions were consolidated within a single rule, without distinction between different categories. The new structure therefore streamlines compliance by carving out a dedicated procedure specifically for IT services, as promised by the 2026 Budget. The key provisions are outlined below:

1. Duration

- Once exercised validly, the SH remains in force for 5 consecutive tax years.
- If an Assessee withdraws their option (by furnishing a declaration), they cannot re-exercise it until the original 5-year period expires.

2. Application filing

- Form No. 49 to be submitted and verified electronically (Digital Signature or EVC) to the DGIT (Systems).
- Must be filed during the first tax year and not beyond 30th June of the following year

3. Automated verification & approval process

- The system verifies if the assessee and transactions are 'eligible' and the option is valid.
- Acceptance or rejection will be communicated within two months from the end of the filing month.
- Application will be rejected only upon providing specific reasons and after giving an opportunity to the assessee to rectify any identified defects.

4. Annual compliance

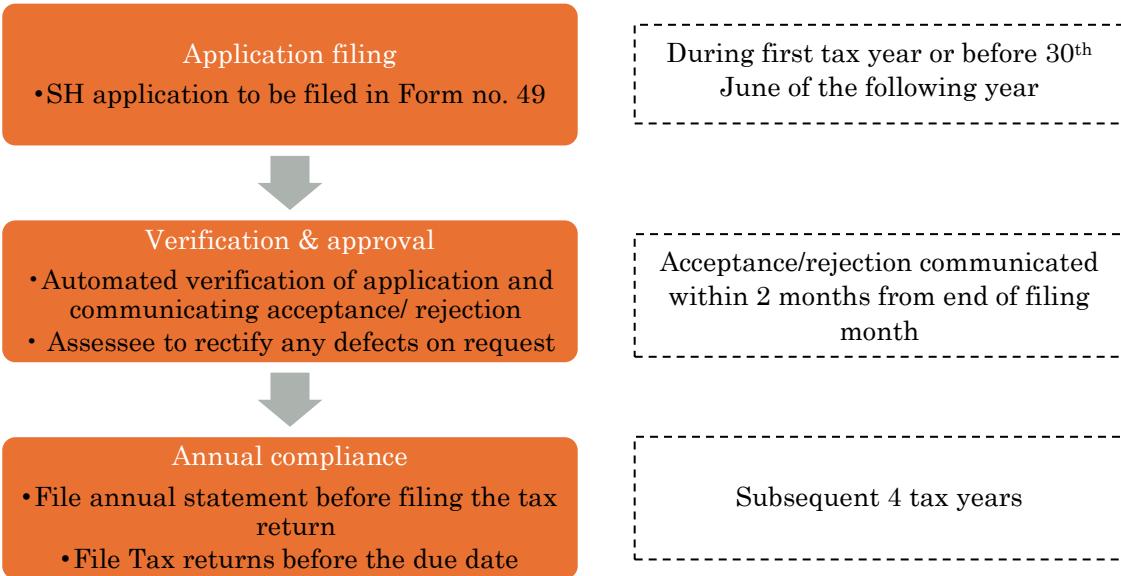
- For each of the four years following the first year, a statement detailing quantum of eligible transactions and profit margins achieved must be filed before filing the tax return (Format of the statement yet to be specified).
- Upon acceptance, the assessee must file tax returns for each of the 5 years as per SH provisions on or before the due date for filing return of income
- The Assessing Officer can make reference to the TPO for transactions other than the eligible IT services covered by the SH.

Further it is specified that the DGIT (Systems) with the approval of CBDT can lay down any further data structure, formats or procedures in connection with furnishing/verification of the above documents, including any required modifications.

For an assessee to qualify as an eligible assessee in respect of IT services, the conditions relating to assumption of only insignificant risks and the foreign principal performing the economically significant functions will continue to apply. In this context, actual conduct takes precedence over contractual terms.

The responsibility to determine whether an assessee is an eligible assessee, bearing insignificant risk, for contract R&D lies with AO or TPO or DGIT (systems) whereas it has been shifted from AO /TPO to DGIT (Systems) for software development, ITeS & KPO services.

The SH procedure for IT services has been summarised below.



Note: As the new category of Data center services are not covered under the provision of IT services, one has to follow the general procedures relating to the other eligible transactions, which involve verification of the SH Application by tax authorities.



Relaxation in Accountant definition

To support the government's vision of home-grown accounting and advisory firms to become global leaders, the definition of Accountant for the purposes of SH Rules has been rationalised, as announced in the Budget. The definition of Accountant is relied in the SH Rules only in connection with the management services safe harbor, for certification of the cost pool. The earlier rule provided a preference to Global firms for the certification as it requires the firm certifying the same to be present in more than 2 countries.

Currently the requirement to have presence in more than two countries has been removed for Indian Chartered Accountants who are members or partners in accountancy or valuation services entities. This condition is now applicable only in the case of persons recognised for undertaking cost certification by the Government of the country where the associated enterprise is registered or incorporated or any of its agencies.

Further the revenue threshold to be fulfilled by an Accountant has been relaxed:

- **Accountant pursuing the profession of accountancy individually or is a valuer** - Annual professional receipts in the year preceding the year in which cost certification is undertaken >INR 50 lakhs (Old rule- Rs. 1 crore);
- **Member or partner in an accountancy or valuation services entity** - Annual receipt of the entity in the year preceding the year in which cost certification is undertaken >INR 3 crores (Old rule- Rs. 10 crores).



New / Updated SH rates

As per the new Rules, the provisions of SH shall apply for a **block period of three tax years** commencing from the tax year 2026-27 and shall continue to apply for subsequent block periods, unless modified. However, for transactions other than IT services, the SH application in Form No. 49 will still need to be filed for each individual year.

Further, with updates to the SH Rules as per Budget 2026, the corresponding changes have been incorporated in the SH rates in the draft Rules:

Particulars	PLI/Base	Old rate	New rate
1. Software development service	Operating profit / Operating expense (OP/OE)	17% if transaction value \leq INR 100 crores, 18% if transaction value $>$ INR 100 crores but \leq INR 300 crores	Consolidated rate of 15.5% for IT services, if aggregate operating revenue \leq INR 2,000 crores in the tax year
2. IT enabled services		24% if employee cost ratio \geq 60%, 21% if employee cost ratio is between 40% to 60%, 18% if employee cost ratio $<$ 40%; where transaction value \leq INR 300 crores	
3. Knowledge processing outsourcing services		24% where transaction value \leq INR 300 crores	
4. Contract R&D relating to software development		-	
5. Data centre services	OP/OE	-	15% (No revenue threshold prescribed yet)
6. Eligible business of storage of components in a bonded warehouse for sale to a contract manufacturer	Gross Receipts	-	Profits and gains chargeable to tax shall be \geq 2%



New / Updated definitions

The following definitions have been included in connection with SH in the new Rules:

- Data centre and Data centre services
- Contract manufacturer, Custom bonded area, Eligible assessee, Eligible business, Gross receipts and Specified electronic goods in connection with the business activity of storage of components in a warehouse in a custom bonded area for sale to a contract manufacturer.



Key considerations

- More clarity is needed on whether SH for IT services can be opted for a period shorter than five years, or if only a continuous 5 year term is permitted.
- More guidance is also required on whether, if the assessee withdraws from the Safe Harbour regime for IT services during the 5 year period, such withdrawal will have retrospective effect or apply only prospectively to future years.
- As the cost allocation certificate for low value-adding services must be filed together with the SH form, it should be obtained in advance. Timely coordination with the AE's location will be required to obtain the certificate.
- Under the current and prior SH Rules, five factors must be assessed to determine whether an Assessee qualifies as an eligible Assessee with insignificant risk. It remains to be seen how this will be implemented in practice, in the case of IT service providers where the verification process has now become automated.

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Nithya Srinivasan, Founder of VSTN Consultancy, was named Middle East Transfer Pricing Practice Leader of the Year, recognizing her outstanding leadership and contribution to the profession. VSTN also received the Best Newcomer in the Middle East award from International Tax Review, showcasing its rapid growth and excellence in global transfer pricing advisory.

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