

Final IT Rules, 2026

Key Changes from Draft
Safe Harbour Rules

April 2026

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Background

The CBDT has officially notified the Final Income-tax Rules, 2026 on 20 March, 2026, marking a milestone in the overhaul of India's Income tax administration. This transition follows a comprehensive consultation process that began when the draft rules were first released for public scrutiny on 7 February, 2026. Stakeholders and taxpayers were invited to submit their feedback and suggestions until 22 February, 2026. To ensure a smooth transition, the CBDT also issued a comprehensive set of FAQs and Guidance Notes on March 23, 2026, providing much needed clarity on the practical application of the new framework.

Our alert below summarizes the significant changes between the draft and final versions from a Safe Harbour perspective, highlighting the critical updates effective as of April 1, 2026.



Changes in Safe Harbour Rules – Final vs Draft

The **Final IT Rules 2026** have provided key clarifications regarding the Safe Harbour ('SH') provisions for eligible transactions, specifically in relation to IT services.

1. Revenue Threshold - IT services

The aggregate operating revenue threshold of INR 2,000 Crores for opting for SH for IT services will be tested only in the first of the five consecutive tax years.

Impact: This means that once the Assessee qualifies in Year 1, the SH option remains valid for the entire 5-year block, even if the operating revenue exceeds INR 2,000 crores in any of the subsequent four years. This provision provides certainty for taxpayers by fixing the eligibility test at the outset, rather than requiring repeated threshold checks across all five years and gives MNEs greater predictability in transfer pricing planning.

2. Timeline for filing of SH application (Form 49) for IT services

The due date for filing of Form 49 in connection with IT services has been revised.

Draft rules: To be filed anytime in the first year, but not after 30th June of the following year

Final rules: Form 49 can be filed on or before the due date of filing ITR (i.e. 30th November) for the first year, thereby providing an extension of 5 months from the draft rules.

Impact: The final rules provide sufficient time for the taxpayers to finalize their books of account, strategize and file Form 49. The modified rule now aligns the timeline with that applicable to other eligible international transactions, creating consistency across categories.

3. Disclosure of IT services in Form 49

The Final Form 49 requires separate disclosures of operating revenue for each of the four IT services (SWD, BPO, KPO, Contract R&D relating to SWD) thereby requiring the Assessee to **categorise the transactions within these buckets**. The Form also introduces two separate tables for eligible international transactions, one dedicated to IT services and another for other eligible international transactions (earlier there was only one common section).

4. Certification of Form 49

Form No. 49 must now be certified by the **Chief Executive Officer** or the **Chairman and Managing Director** of the Assessee, in addition to verification by the person authorized to sign the ITR. It must be certified that:

- i) The information furnished in the form is **true and correct**, with no concealment of relevant facts
- ii) In addition, the certification contains **check-box declarations** for IT services, covering
 - Aggregate operating revenue of IT service transactions does not exceed INR 2,000 crore
 - Most of the economically significant functions are performed by the foreign principal as per Rule 87(2)(a)
 - Funds, capital, economically significant assets are provided by the foreign principal/associated enterprises, with the assessee only remunerated for services rendered, as per Rule 87(2)(b)
 - The assessee works under the direct supervision of the foreign principal/associated enterprises as per Rule 87(2)(c)
 - The assessee has no ownership rights (legal or economic) over intangibles generated or outcome of intangible generated during the course of services or outcome of research, which vest with the foreign principal as per Rule 87(2)(e)

Impact: This increases the responsibility of the CEO/Chairman and MD to ensure that the assessee qualifies as an eligible assessee for IT services by meeting the conditions relating to the foreign principal's performance of economically significant functions and its supervision of the assessee. Notably, the actual conduct of the parties takes precedence over contractual arrangements.

5. Withdrawal

The draft rule didn't specify a cut-off for withdrawal of the SH option exercised for IT services. Under the final rules, however, withdrawal is expressly barred after **6 months from end of the first tax year**. If the assessee withdraws the SH option, the option shall cease to exist for the tax year of withdrawal and for all subsequent years.

Impact: Given the manner in which the rules have been framed, the Assessee is permitted to withdraw from the SH option only within a limited window, i.e., by 30 September following the first tax year.

6. Data Centre Services- Expansion of Definition

The definition of Data centre services has been broadened in the Final Rules to cover use of other **IT/software infrastructure** (storage systems, operating systems, security solutions, cooling systems, software platforms) and **the exclusion of data hosting services** has been removed.

7. Evaluation of Insignificant risk

Draft rules: As per the draft rules, the responsibility for assessing whether an Assessee engaged in contract R&D services for software development bears insignificant risk, for the purpose of evaluating Safe Harbour eligibility, rested with the **DGIT (Systems), the TPO, or the AO**.

Final rules: However, as per the final rules, now only the **DGIT (Systems)** will evaluate the eligibility for contract R&D relating to software development along with the other three categories of IT services. Further, for the purpose of identifying an eligible assessee operating with insignificant risk, the DGIT (Systems) is now required to evaluate an additional factor. Beyond the condition that the assessee should not hold any ownership rights in intangibles or in the results of intangibles generated in the course of rendering services, the assessee **must also have no rights in any research outcomes**, which are required to vest wholly with the foreign principal.

Impact: This expanded coverage ensures that only entities that do not perform or control key entrepreneurial functions and do not share in the benefits of research are treated as low-risk service providers. This ensures SH benefits are confined to captive R&D models.

8. Rejection of SH application

For transactions other than IT services:

Draft rules: A Transfer Pricing Officer (TPO) order rejecting an assessee's application in Form 49 or a Commissioner's order against the Assessee's objections may be passed **after giving an opportunity of being heard** to the Assessee.

Final Rules: The language has been modified to require that a **"reasonable opportunity of being heard"** is given before such an order is passed.

Impact: The change strengthens procedural safeguards, ensuring fairness and due process.



Key considerations

The Final Income-tax Rules, 2026 provide the certainty and procedural clarity needed for taxpayers to strategically evaluate and opt for Safe Harbour, making it a viable long-term transfer pricing strategy rather than a short-term compliance choice. Key points to consider are:

- Under the 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. Considering an additional certification is now required from the Chairman/MD&CEO on these factors, the onus will now shift to the Assessee to ensure that it satisfies the relevant conditions. Documenting the functional profile of the Assessee in line with the actual conduct of the parties becomes even more important.
- Given the short withdrawal window for the IT services SH, the Assessee should ensure that a thorough feasibility analysis is undertaken upfront before opting for the same.

About us

VSTN Consultancy is a Global Transfer Pricing firm with extensive expertise in the field of international taxation and transfer pricing. VSTN Consultancy has been awarded by International Tax Review (ITR) as Best Newcomer in Asia Pacific – 2024 and is ranked as one of the recommended transfer pricing firms. VSTN has also been nominated in 9 Categories under APAC, EMEA and Middle East Region ITR awards 2025. VSTN has its offices in India, UAE, US and Singapore.

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.

VSTN Consultancy has been honored with the Best Global Transfer Pricing Consultancy 2025 – India award at the prestigious Wealth & Finance Management Consulting Awards 2025.

Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy and drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, BEPS related compliances (including advisory, Masterfile, Country by Country report), safe harbour filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement. VSTNs senior partners have been ranked in ITR in the list of recognized Practitioners.



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