



SAFE HARBOUR → RULE

TP 201 SAFE HARBOUR RULE :
SERIOUSLY, READ THIS NOW BEFORE
YOU GO FOR IT (WEEK 1)



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OECD SAYS YES TO SAFE HARBOUR RULES



IN 2017, like a favourable wind-altering course, the 2017 revision of the OECD Guidelines welcomed a positive change.

WHAT IS IT?

Navigating the complexities of transfer pricing can be as challenging as sailing stormy seas.

Amid the thick and complicated transfer pricing regulatory requirement, safe harbour rules act as ***an option to opt for a more simplistic approach to document your transfer pricing.*** It is offering predefined measures that deviate from the usual Transfer Pricing regulations.

OECD'S SHIFTING STANCE: A WELCOMING YES

Historically, the Organisation for Economic Co-operation and Development (OECD) has not favoured safe harbours. However, like a favourable wind-altering course, the 2017 revision of the OECD Guidelines welcomed a positive change. The OECD now recognises that safe harbours may justifiably serve as a haven for taxpayers engaging in low-risk related party transactions with minimal revenue impact under certain conditions.

THE BENEFICIAL CURRENTS OF SAFE HARBOUR

Considering that safe harbours are more than just a conduit for easing compliance burdens, what currents of benefits do they carry us towards?

For instance, with low-value-adding services, companies can avoid the complex needs of a full benchmarking study and instead, apply a direct cost-plus method, such as a cost-plus 5% approach.

This not only eases compliance procedures but also cements a *sense of certainty* for both taxpayers and tax agencies. Companies can steer forward confidently without the worry of having their markups questioned, while tax authorities are assured a predetermined level of taxable income.



WHY ANCHOR TO THE SAFE HARBOUR RULE?

At this juncture, you might be pondering, "Why should I consider this approach?" The answer is quite straightforward:

Reduced Compliance Efforts

Drastically cut down the time and resources spent on exhaustive documentation.

Minimised Tax Risks

The probability of adjustments or penalties during a tax audit are greatly lowered.

Certainty and Predictability

Knowing your pricing strategy is tax authority-approved brings peace of mind.

Businesses, especially those operating within industries where margins are thin and scrutiny is high, find safe harbour rules a godsend.

Yet, it's not all calm seas; disputes may arise if authorities challenge the nature of these transactions. In light of such potential headwinds, ***weighing the safe harbour's worth is crucial.***

PROBLEM



WHAT ARE THE CHALLENGES ASSOCIATED WITH SAFE HARBOUR?



Potentially Not the Best Economic Outcome

At times, safe harbour margins may not align with economic realities, leading to less-than-ideal tax outcomes.

Limited Applicability

This is not a one-size-fits-all solution. Certain activities or transactions may fall outside safe harbour provisions.

Navigational Guidance Required

Understanding whether the rule applies to your unique situation requires evaluation from seasoned transfer pricing practitioners.

MINIMUM TRANSFER PRICING DOCUMENTATION

In some countries, tax authorities are willing to reach further. For instance, in Malaysia, we go beyond the OECD standards.



Malaysia Inland Revenue Board go beyond the usual Low Value Adding Services, and also allows taxpayers to EXEMPT from preparing Full TP, if the taxpayer fulfilled the following categories : —

Income

Gross Income under RM 25 million and Related Party Transactions under RM 15 million.

or

Financing

Financial Assistance of less than RM 50 million.

Taxpayers are allowed to prepare Minimum Transfer Pricing Documentation (i.e., In other countries, they are more commonly known as simplified Transfer Pricing), which avoids the complexities of benchmarking. There is a rationale for this; our Malaysia Inland Revenue Board regards this transaction as a **low transfer pricing risk**, and they are willing to let it go without the heavy burden of Full Transfer Pricing documentation.

MUST YOU?



Is it always advisable for companies to **MUST UTILISED** these safe harbours?

Not necessarily.

Sometimes, charting a course through full benchmarking studies offers greater precision in pricing strategies. However, before beginning preparations, it's prudent to truly understand each country's local safe harbour landscapes, assess eligibility, and make a strategic choice.

Safe harbours in transfer pricing serve as a lighthouse, guiding companies through the regulatory fog with pre-established parameters that ensure compliance, provide predictability, and allow tax administrations to focus their efforts on high-risk related party transactions. Like any considered tax strategy, safe harbours require seasoned navigation – the knowledgeable voyager who reaps the benefits of these fiscal sanctuaries.

SUMMARY



Safe Harbour Rule is a legal term which allows taxpayers to skip the benchmarking requirement.

In Malaysia there are Two circumstances where the Safe Harbour rule applies:

1.

Low Value-Adding Services (will discuss more next week)

2.

Low-Risk Related party transactions which fulfilled the following threshold:

- Gross income under RM 25 million and related party transactions under RM 15 million; or
- Financial Assistance of less than RM 50 million.

ABOUT US



The e-book you are currently reading, is part of the Minimum Transfer Pricing program conducted with Dr Choong Kwai Fatt. These e-book is published to addressed specific key topics covered in the program.

It acts as Recap of important topics, so that you can remember them deeper and longer. Also to consolidate what you have learnt and deepen the know-how.

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Next up :
Low Value Added Services