

Amendments proposed to the Special Economic Zone Rules, 2006

December 11, 2017

In brief

Special Economic Zone (SEZ) Act was notified in 2005.

With changing times and also in view of the GST transition in July 2017, need was felt to align the SEZ Rules and address specific issues of the industry. For this purpose, a Committee was constituted by Ministry of Commerce to review the SEZ Rules, 2006 and make suitable recommendations.

The Committee has recently submitted their recommendations, on which the Ministry of Commerce has sought comments by 31 December 2017.

In detail

The recommendations *inter alia* can be divided into:

- Procedural relaxations.
- Operational flexibility.
- Encouraging exports and employment generation with closer monitoring.
- Timely dispute resolution through alternative mechanism.

The key highlights of proposed amendments is summarised below.

Relating to establishment of SEZ

- State Governments to forward the proposal for establishment of SEZ to jurisdictional Development Commissioner instead of Board of Approval (BoA).
- Reduction of minimum area requirement from 25 hectares to 4 hectares for establishment of sector specific SEZ (bio-

technology, non-conventional energy including solar energy equipment or cell, agro based food processing, services, etc.) in the North East States, Goa, Jammu & Kashmir, Uttarakhand or in a Union Territory.

- Letter of Approval (LoA) granted to a developer to be valid for three years or as may be extended by the BoA within which at least one unit has become operational.

Relating to units in SEZ

- For establishment of SEZ unit, requirement to file only one copy of application instead of present requirement of five copies.
- Discretionary extension of time limit for submitting the registered lease deed by Development Commissioner (currently, the time period is six months from issuance of LoA).

- Possibility of merging SEZ units of the same company within a SEZ under a single LOA. The net foreign exchange (NFE) and income tax exemption of the merged units to be considered from the date from which first unit commenced operation.
- Format for renewal of LoA suggested. Renewal to be done on the basis of evaluation of specified criteria such as actual exports performance and employment generation *vis-a-vis* projections, cases of violation or default etc. The decision of Development Commissioner/ Approval Committee to be final and binding except where appeal is preferred before BoA.
- Benefit from duty/ taxes on goods required for establishment of unit to be extended to sub-contractor as well (currently, limited to contractors).

- Facility of sub-contracting for Domestic Tariff Area (DTA) to be allowed. The same to be restricted to 15 percent of FOB value of exports in the preceding financial year.

Net Foreign Exchange Earning computation

- NFE computation to be revised. It will be computed only for export and supplies of goods manufactured in SEZ or services.
- Supplies of goods in DTA to be counted towards NFE to be reduced from 15 categories to 11. These *inter alia* include:
 - Supply of services in DTA against foreign exchange to be removed.
 - Supply of goods to DTA against payment in foreign exchange from EEFC account or receipt of foreign exchange received from overseas to be removed.
 - Supply of goods to power projects, fertilizer plants, bonded warehouses, etc.
- For the purpose of computation of NFE, value of domestically procured inputs to be taken into account.

- Gems and jewellery units required to achieve prescribed value addition instead of NFE.

Miscellaneous

- Specified format of Legal Undertaking for exit of SEZ unit proposed.
- Trading of goods to DTA not to be allowed except by a Free Trade and Warehousing Zone unit.
- Proposal to establish SEZ Rules interpretation committee comprising of officials from Ministry of Commerce, Directorate General of Foreign Trade and Directorate General of Export Promotion to clarify issues/ matters relating to SEZ rules.
- BoA to grant relaxation from any provision of SEZ rules in specified circumstances and subject to conditions.
- In case of *bona fide* default in achieving NFE or prescribed value addition, the shortfall to be regularised on deposit of an amount equal to one percent of shortfall in FOB value.
- Procedure to enforce bond cum legal undertaking to be prescribed to recover dues.
- Requirement to submit

monthly report on investment, employment and value of goods and services imported, procured and exported through SEZ online system by fourth day of succeeding month.

PwC comments

The proposed amendments seems to be in line with the objective of trade facilitation, ease of doing business and dispute redressal of the government. Attempts also seem to have been made to align the regulations with GST, instructions issued periodically and providing operational flexibility with focus on exports and employment generation.

Being a comprehensive review of SEZ regulations, the proposed amendments will bring operational ease to business.

In true spirit of partnership trade feedback should be shared and additional inputs provided so that day-to-day operational challenges are addressed as part of proposed amendments.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greams Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctr.knowledgemanagement@in.pwc.com

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