

FAQs on SEZ

Q1. What is a Special Economic Zone (SEZ)?

Ans. Special Economic Zone (SEZ) is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations, duties and tariffs.

Q2. What is meant by Domestic Tariff Area (DTA)?

Ans. Domestic Tariff Area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones.

Q3. What are the salient features of SEZ scheme?

Ans. The salient features of the SEZ scheme are: -

- They allow duty free import of goods and services for units and developers for their operations leading to a substantial saving in costs.
- All supplies by DTA to SEZ are treated as exports and are zero rated in terms of application of GST.
- SEZs are deemed to be an airport, port, Land Custom Stations, and Inland Container Depot under the Customs Act and a dedicated customs formation is there for ensuring clearance for exports, imports, deemed exports, intra SEZ sales, domestic procurement and domestic sales
- SEZs ensure ease of doing business by ensuring online applications, reducing procedural complexities, bureaucratic hassles and other barriers to trade.
- All Goods and services supplied by SEZ units to DTA are treated as imports into India and is subject to all procedures and rules applicable in case of normal imports into India
- Economic laws are generally more liberal than rest of the country's general economic laws.
- No routine examination by customs authorities of export/import cargo

Q4. What are the guidelines for setting up of SEZs?

Ans. The guidelines (specified in Section 5 of the SEZ Act, 2005) are

- Generation of additional economic activity
- Promotion of exports of goods and services
- Promotion of investment from domestic and foreign sources
- Creation of employment opportunities
- Development of infrastructural facilities
- Maintenance of sovereignty and integrity of India

Q5. What is a Free Trade and Warehousing Zone (FTWZ) and how is it different from trading?

Ans. Free trade Warehousing Zone (FTWZ) means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on. (Section 2(n) of SEZ Act). Warehousing is normally done on behalf of a third party while trading is done by the SEZ unit itself.

Q6. What are the incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment?

Ans. The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units
- Exemption from Central Sales Tax, Service Tax and State sales tax. These have now subsumed into GST and supplies to SEZs are zero rated under IGST Act, 2017.
- Other levies, if exempted by the respective State Governments.
- Single window clearance for Central and State level approvals.
- Supplies to SEZ are zero rated under IGST Act, 2017.

Q7. Which are the key entities in the SEZ Scheme?

Ans. Department of Commerce (DOC): The function of DOC is Formulation of policy for Special Economic Zones and time to time review of policy issues pertaining to SEZs. Operational matters related to SEZs-developer, co-developer and units

Office of Development Commissioner: The office of the Development Commissioner (DC) consists of DC, supported by officers including those on deputation from Customs and Central Excise Department.

Developer: Developer means a person who, or a State Government which, has been granted a LOA for setting up of SEZ. Central Government may, on the basis of approval of the Board, approve more than one Developer in a Special Economic Zone in cases where one Developer does not have in his possession the minimum area of contiguous land, for setting up a SEZ.

Co-developer: Co-Developer is any entity co-operated by the developer for setting up infrastructural facilities in the approved SEZ. He would need to enter into an agreement with the Developer. The proposal for any co—developer if approved by the BOA. He is granted a LOA by the BOA for the same.

SEZ Units: A Unit set up by an entrepreneur in a SEZ. It includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre.

Q8. What is the application procedure for setting up of a Special Economic Zone (SEZ)?

Ans. A proposal shall be made by the developer in Form ‘A’ and be submitted to the concerned Development Commissioner (DC) (as specified in Annexure-III of the SEZ Rules), who, shall forward it to the Board of Approval (BOA) within 15 days with his inspection report, State Government’s recommendation and other details to be furnished for issue of notification for declaration of an area as SEZ (specified under rule 7.)

The State Government shall forward the proposals to BOA along with its recommendations, within 45 days of receipt of such proposal. If the BOA approves a proposal received, the person shall obtain concurrence of the State Government within 6 months from the date of such approval. While forwarding a proposal, the State Government shall ensure that the requirements for establishment of SEZ (under Rule 5 of SEZ Rules) have been complied with and shall attach copies of relevant notifications issued by it in this regard.

The central government shall within a period of 30 days of the communication received grant either a formal or an in-principle approval.

Q9. What is the difference between formal and in-principle approval?

Ans. A Formal approval is granted where land is in possession of the developer, an application to which is made in Form-B to the person or the State Government concerned. However, an application is made in Form C in case if the approval is for providing infrastructural facilities in the SEZ, incorporating additional conditions, if any, specified by the BOA while approving the proposal

In-principle approval in other cases in Form-B1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the BOA while approving the proposal.

Q10. What are the basic criteria, including land area for any SEZ?

The identified area for an SEZ must be contiguous, vacant and have no public thoroughfare. The definition of vacant land as per the SEZ Rules are that there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.

In terms of land area requirements, an SEZ other than a SEZ for Information Technology(IT) or IT enabled services, Biotech or Health (other than hospital) service, shall have a contiguous land area of 50 hectares or more

If a SEZ is proposed to be set up in States of Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himachal Pradesh, Uttarakhand, Sikkim, Goa or in a Union Territory, the area shall be 25 hectares or more

There shall be no minimum land area requirements for SEZ for IT or IT enabled services, biotech or health (other than hospital), but a minimum built up processing area requirement shall be applicable, based on category of cities [Given in detail in Annexure IV(a) of the SEZ Rules]

1. Category 'A' – 50,000 sq. mts.
2. Category 'B' – 25,000 sq. mts.
3. Category 'C' – 15,000 sq. mts.

The minimum processing area in any SEZ cannot be less than 50% of the total area of SEZ

Q11. What is the validity of Letter of Approval (LOA) granted to the Developer?

Ans. The Central Government shall grant the LOA to the Developer

The LOA of a Developer granted [under rule 6(1)(a) of the SEZ Rules] shall be valid for a period of 3 years within which at least one unit has commenced production and the SEZ becomes operational from the date of commencement of such production: Provided that the BOA may, on an application by the developer or the co-developer, for reasons to be recorded in writing extend the validity period: The Developer or Co-developer, shall submit the application in Form C1 to the concerned DC as specified in Annexure III, who, within a period of 15 days, shall forward it to the BOA with his recommendations

Where the Special Economic Zone becomes operational, the LOA granted shall be valid till the period of validity of notification of such SEZ.

The LOA of a Developer granted [under clause (b) of Rule 6(1) of the SEZ Rules] shall be valid for a period of one year within which the Developer shall submit suitable proposal for formal approval in Form "A" as prescribed (under the provisions of rule 3 of the SEZ Rules).

Provided that the BOA may, on an application by the developer, for reasons to be recorded in writing, extend the validity period: Provided further that the Developer shall submit the application in Form C2 to the concerned DC, as specified in Annexure III, who, , shall forward it to the BOA with his recommendations within 15 days.

Q12. Can Central Government review the LOA given to the developer?

Ans. The Central Government may [under 6A of the SEZ Rules] review the LOA granted to the developer on the recommendation of the BOA in the following circumstances: -

The Developer submits application in Form C3 for change of the sector to the concerned DC, as specified in Annexure III, who, within a period of fifteen days shall forward it to the BOA with his recommendations:

The Developer submits application in Form C4 for increase in the area to the concerned DC, as specified in Annexure III, who, within a period of fifteen days, shall forward it to the BOA with his recommendations;

The Developer submits application in Form C5 for decrease in the area to the concerned DC, as specified in Annexure III, who, within a period of fifteen days, shall forward it to the Board with his recommendations.

Q13. What is the specific approval required from the State Government for setting up of an SEZ?

Ans. The Developer requires a certificate from the concerned State Government or its authorized agency stating that the developer(s) have

- Legal possession
- Irrevocable rights to develop the said area as SEZ
- The said area is free from all encumbrances

The State Government shall, while recommending a proposal for setting up of Special Economic Zone to the Board indicate whether the proposed area falls under reserved or ecologically fragile area as may be specified by the concerned authority.

Where the Board approves a proposal received for setting up an SEZ, the person shall obtain concurrence of the State Government within six months from the date of such approval.

Q14. What are the exemptions given by the State Government to the SEZs?

Ans. The State Government is not mandated but shall endeavour that the following are made available in the State to the proposed SEZ Units and Developer, namely: -

- Exemption from the State and local taxes, State Goods and Services Tax, levies and duties, including stamp duty, and taxes levied by local bodies on goods required for authorized

operations by a Unit or Developer, and the goods sold by a Unit in the DTA except the goods procured from DTA and sold as it is

- Exemption from electricity duty or taxes on sale, of self-generated or purchased electric power for use in the processing area of a SEZ
- Allow generation, transmission and distribution of power within a SEZ
- providing water, electricity and such other services, as may be required by the developer be provided or caused to be provided
- Delegation of power to the DC under the Industrial Disputes Act, (No. 14 of 1947) and other related Acts in relation to the Unit and workmen employed by the developer.
- Declaration of the SEZ as a Public Utility Service under the Industrial Disputes Act, (No.14 of 1947)
- Providing single point clearance system to the Developer and unit under the State Acts and rules;

Q15. How are the processing and non-processing areas demarcated?

Ans. The areas falling within the SEZ may be demarcated by the Central Government or any authority specified by it as-

- (a) The processing area for setting up Units for activities, being the manufacture of goods, or rendering services
- (b) The area exclusively for trading or warehousing purposes
- (c) The non-processing areas for activities other than given in (a) or (b).

The minimum processing area in any SEZ cannot be less than 50% of the total area of SEZ

Q16. What is the procedure for setting up of units in SEZ?

Ans. A consolidated application seeking permission for setting up of a Unit and other clearances, including those given in [17(1) of the SEZ Rules), shall be made to the DC (in Form F of the SEZ Rules), with a copy to the Developer: —

The DC shall get the proposal scrutinised and get it placed before the Approval Committee for its consideration.

The Approval Committee shall meet once in every fortnight on a fixed predetermined day.

The proposals received [under clauses (c) & (e) of sub-section (2) of section 9 of the SEZ Act] shall be placed before the BOA by the DC for its consideration.

The Approval Committee may approve or approve with modification or reject a proposal placed before it, within 15 days, where the approval is to be granted by the Board, the Board shall approve or approve with modification or reject such proposal within 45 days of its receipt:

The Approval Committee shall approve the proposal if it fulfils the criteria such as meeting NFE, availability of space, conforming to pollution norms, contact and personnel information, barring of specified activities etc. [sub rules 2, 3,4,5,6 of Rule 18]

On approval of the proposal, the DC shall issue a LOA (in Form G) for setting up of the unit.

Q17. How can a developer procure or import goods and services?

Ans. The Developer may import or procure goods and services from the DTA, without payment of duty, taxes and cess for the authorized operations, subject to the following provisions.

The Developer shall make an application, after obtaining approval for the authorized operations (under rule 9 of SEZ Rules), to the DC, along with the list of goods and services, including machinery, equipment and construction materials required for the authorized operations, duly certified by a Chartered Engineer for approval by the Approval Committee.

The Developer shall declare the place of storage of goods within the SEZ to the Specified Officer (SO). The goods imported or procured from the DTA by the Developer for authorized operations shall be kept in a clearly demarcated area for inspection by the authorized officer before such goods are brought into use.

The Developer shall execute a Bond-cum-Legal Undertaking (in Form D), jointly with DC and SO, with regard to proper accounting and utilization of goods for the authorized operations within a period of one year or such period, as may be extended by the SO.

The Developer shall maintain a proper account of the import or procurement, consumption and utilization of goods and submit quarterly and half-yearly returns to the DC (in Form E). The Developer shall submit a half-yearly certificate every financial year regarding utilization of goods from an independent Chartered Engineer to DC and SO and every certificate shall be filed within 30 days of the period specified.

The Developer shall not remove goods from the SEZ to the DTA except with the permission of the SO and on payment of duty applicable on such goods.

Q18. What are the benefits for a DTA supplier to an SEZ?

Ans. The DTA supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of export/zero-rated permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.

Supplier of precious and semi-precious stones and synthetic stones and processed pearls from DTA to SEZ units shall be eligible for grant of Replenishment, provided that the application for the Replenishment Licence shall be made to the Development Commissioner.

Free on Board value of export of the Unit can be clubbed with Free on Board value of export of entrepreneur in the DTA or vice versa for the purpose of according status holder certificate.

Q19. What the duty applicable for DTA sales by an SEZ?

Ans. Any goods removed from a Special Economic Zone to the DTA shall be chargeable to duties of customs which includes basic customs duty, IGST, antidumping, countervailing and safeguard duties (under the Customs Tariff Act, 1975), where applicable, as leviable on such goods when imported

The rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty

Q20. What are the advantages for an SEZ unit vis a vis DTA units who can take Advance Authorisations or EPCG for duty free inputs and capital goods?

Ans. In the case of Advance Authorisations or EPCG licences, there has to be repeated applications made to the regional offices of DGFT. However, in the case of SEZ, as long as the inputs are related to the manufacturing or services, there is no need for such applications. Moreover, even building materials for the use of the units can be imported under the SEZ Scheme.

Q21. What are the benefits for an SEZ developer?

Ans. The benefits for an SEZ developer are the following:

- Exemption from any duty of customs, [(under the Customs Act, 1962) (or the Custom Tariff Act, 1975)] on goods imported into, or service provided in, a Special Economic Zone, to carry on the authorised operations by the Developer or from a Special Economic Zone to any place outside India
- Exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985, on goods brought from DTA to a SEZ, to carry on the authorised operations by the Developer
- Exemption from service tax (under Chapter-V of the Finance Act, 1994) on taxable services provided to a Developer to carry on the authorised operations in a Special Economic Zone
- Exemption from the securities transaction tax leviable [under section 98 of the Finance (No. 2) Act, 2004] in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre.
- Exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer.

Q22. How are the goods admitted to SEZ supposed to be utilized?

Ans. The goods admitted into a SEZ shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption, in case a Unit is unable to utilize the goods imported or procured from DTA, it may export the goods or sell the same to other Unit or to an Export Oriented Unit(EOU) or Electronic Hardware Technology Park(EHTP) Unit or Software Technology Park(STP) Unit or Bio-technology Park(BTP) Unit, without payment of duty, or dispose of the same in the DTA on payment of applicable duties on the basis of an import licence submitted by the DTA buyer, wherever applicable.

Q23. What is the procedure for Sub-contracting?

A Unit may sub-contract a part of its production or any production process, to a unit(s) in the DTA or in a SEZ or EOU or a unit in EHTP Park unit or STP unit or BTP unit with prior permission of the SO to be given on an annual basis and subject to following conditions, namely: —

1. The finished goods requiring further processing or semi-finished goods including studded jewellery, taken outside the SEZ for sub-contracting shall be brought back into Unit within 120 days or within such period as may be extended by the SO for reasons to be recorded in writing for grant of such extension. However, in the case of plain jewellery, the time period for getting it back is 28 days while that for studded jewellery, it is 45 days.
2. Cut and polished diamonds and precious and semi-precious stones (except rough diamonds, precious or semi-precious stones having zero duty) shall not be allowed to be taken outside the SEZ for sub-contracting;
3. The DTA Unit undertaking sub-contracting or supplying jewellery against exchange of gold or silver or platinum shall not be entitled to export entitlements;
4. The value of the sub-contracted production of a Unit in any financial year shall not exceed the value of goods produced by the Unit within its own premises in the immediately preceding financial year:

A Developer or a co-developer or on their behalf their contractor, as the case may be, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the DTA or a unit in the same or another SEZ or EOU or a unit in EHTP Unit or STP Unit or BTP Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

Q24. What is the procedure for Contract Farming?

Ans. A Unit engaged in production or processing of agriculture or horticulture products, may, on the basis of annual permission from the SO, remove to a farm in the DTA, inputs, namely, seeds, fertilizers and chemicals for pre and post-harvest treatment, micro nutrients, plant and growth regulators and other organic and inorganic substances used for plant nutrition, insecticides, fungicides, weedicides, herbicides (and the equipment listed in Rule 44 of the SEZ Rules)

Provided that the removal of such items shall be subject to following conditions,

- Supply of inputs by Unit to the contract farm(s) shall be subject to the input-output norms as may be approved by the Board
- There shall be contract farming agreement between the Unit and DTA farmer(s)
- The Unit has been in existence for at least two years and is engaged in export of agriculture or horticulture products: Provided that bank guarantee equivalent to the duty foregone on the capital goods or inputs proposed to be taken out shall be furnished to the SO if the Unit has not been in existence for two years.

Q25. What is the procedure for Exports from SEZ?

Ans. A Unit may export goods or services as per the terms and conditions of LOA including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.

A Unit engaged in development of computer software may undertake export, including export of professional services, using data communication links or do physical exports, including through courier service.

The Foreign Trade Policy restrictions on State Trading Enterprises shall not apply to SEZ manufacturing Units. Provided that export of iron ore shall be subject to conditions as may be laid down by the Central Government from time to time.

Minimum export price and requirements of export in consumer pack as provided for in the Foreign Trade Policy shall apply in case the raw materials are procured indigenously and exported without further processing or manufacturing activities.

The export of textile items shall be governed by bilateral agreements, if any.

A Unit may export free samples without any limit, including samples made in wax moulds or silver mould or non-precious metal alloy or rubber moulds through all permissible modes of export.

Q26. How are the units monitored in SEZs?

Ans. The annual review of performance of unit and compliance with the conditions of approval shall be undertaken by Approval Committee on the basis of Annual Performance Report (in Form I) duly certified by an independent Chartered Accountant before the end of the first quarter of the following financial year.

Units, which have not completed one year of operation from the date of commencement of production, will not be monitored. In case a unit has completed less than five years from the date of commencement of production, it will be monitored for the number of completed years. Annual monitoring in the cases of old units which have completed more than five years will be undertaken for only such number of years which fall in the subsequent block/s of five years.

CRITERIA FOR ANNUAL MONITORING:

Units with negative Net Foreign Exchange (NFE) in the 1st and 2nd year shall be placed under the Watch List to watch their performance.

If a Unit continues to be NFE negative by the end of 3rd year, a Show Cause Notice shall be issued. If the negative performance continues till the 5th year, DC shall initiate penal action (as provided under rule 25 of the SEZ Rules)

Q27. What are requirements for exports and deemed exports for SEZs?

- The Units are only required to achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production
- $NFE = (A-B)$ where
- A is the sum of physical exports in free foreign exchange and deemed exports (as per Rule 53 of the SEZ Rules)
- B is the sum of the imported and domestically procured raw materials and consumables along with the amortised value (10% per year over a 10-year period) of the capital goods and foreign technical know-how fees

Q28. How can a SEZ Unit Exit from the SEZ?

Ans. The Unit may opt out of Special Economic Zone with the approval of the DC and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock, if the unit has not achieved positive NFE, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992.

The following conditions shall apply on the exit of the Unit: -

- Penalty imposed by the competent authority would be paid and in case an appeal against an order imposing penalty is pending, exit shall be considered if the unit has obtained a stay order from competent authority and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the Unit from this requirement;
- In case the Unit has failed to fulfil the terms and conditions of the LOA and penal proceedings are to be taken up or are in process, a legal undertaking for payment of penalties, that may be imposed, shall be executed with the Development Commissioner;
- The Unit shall continue to be treated a unit till the date of final exit.

In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery shall be handed over to an agency nominated by the Central Government at a price to be determined by that agency.

DC may permit a Unit, as one-time option, to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

Depreciation norms for capital goods shall be as given in sub-rule (1) of rule 49 of the SEZ Rules

The units opting out from the SEZ shall execute a legal undertaking (in form L)

Q29. Can the SEZ Units transfer their assets and liabilities while exiting?

Ans. The unit may opt out of the SEZ by transferring its Assets and Liabilities to another person by way of transfer of ownership including sale of SEZ units subject to following conditions: -

- The unit has held a valid LOA as well as lease of land for not less than a period of 5 years on the date of transfer
- The unit has been operational for a minimum period of 2 years after the commencement of production as on the date of transfer
- Such sale or transfer transactions shall be subject to the approval of the Approval Committee
- The transferee fulfils all eligibility criteria applicable to a unit
- The applicable duties and liabilities, if any, shall stand transferred to the transferee unit which shall be under obligation to discharge the same on the same terms and conditions as the transferor unit.

Q30. What are the differences between Special Economic Zones (SEZs) and Export Oriented Units (EOUs)?

Ans. Although both EOUs and SEZs were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the customs jurisdiction and therefore, a foreign territory. Thus, any sale made from within an SEZ to DTA is considered export while any sale made by an EOU to DTA is regarded as deemed exports. Sales from SEZs to DTAs are more common, compared to sales from EOUs to DTAs.

Being a clearly demarcated area, there is substantial control over the physical movement of goods to and from SEZs, but the same cannot be said about EOUs. In terms of taxability, an SEZ based establishment is not required to pay tax, while an EOU has to pay tax which it can claim as a refund later.

Minimum investment in plant and machinery and building is Rs. 1 crore for EOUs. This should be before commencement of commercial production, there is no such limit for SEZ

EXPORT ORIENTED UNIT(EOU) FAQs

(GENERAL)

Q-1. What are EOUs? Where are the legal provisions for EOUs found?

Export Oriented Units (EOUs) have been defined under the Foreign Trade Policy (FTP) as those units undertaking to export their entire production of goods and services [except permissible sales in Domestic Tariff Area (DTA) for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under the EOU.

The legal provisions for EOUs are given in Chapter 6 of the Foreign Trade Policy (FTP), Chapter 6 of Handbook of Procedures (Vol 1), Appendix 6 and Aayat Niryat Forms (ANF) 6. Any amendments to these provisions are notified by the office of DGFT through notifications, public notices, circulars etc.

Q-2. What are the objectives of the EOU Scheme?

Ans. The objectives of the EOU Scheme are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

Q-3 What are the application procedures and approvals required for setting up of an EOU?

Ans. An application for setting up an EOU needs to be made in ANF 6A (in triplicate) to the office of the DC. Apart from the application fee of Rs 5000/- (demand draft), some of the other documents required are the Certificate of Incorporation, Articles of Association (AOA), Partnership Deed as the case may be, existing and proposed capital structure, would need to be submitted.

Application for setting up of EOU shall be approved or rejected by Unit Approval Committee (UAC) within 15 days, as per the criteria specified in appendix 6A

On approval, a Letter of Permission (LoP) is issued by Development Commissioner of the Special Economic Zone (SEZ) under whose administrative control the EOUs comes. The validity of LoP is for a period of 5 years (excluding the period of 2 years for commencement of production). The LoP would be construed as an Authorisation for all purposes.

Q-4: What are the conditions including export criteria to be met for EOUs?

An EOU shall execute a Legal Undertaking (LUT) with the DC. It has to account for the utilisation of inputs as per the Standard Input Output Norms (SION). However, where there is

no SION, the norms for waste, scrap and remnants would be 2%. The export proceeds have to be realized within nine months

It has to ensure a positive Net Foreign Exchange (NFE) which is computed as per the following formula.

$NFE = (A-B)$ where

A is the sum of physical exports in free foreign exchange and deemed exports (as per para 6.09 of FTP)

B is the sum of the imported and domestic procured raw materials and consumables along with the amortised value (10% per year over a 10-year period) of the capital goods and foreign technical know-how fees

The failure to ensure positive NFE or to abide by any of the terms and conditions of LoP/ Industrial Licence (IL) / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law / rules and cancellation or revocation of LoP.

Q-5. What is the eligibility for setting up an EOU?

Ans. Only projects having a minimum investment of Rs.1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in Handicrafts /Agriculture/ Floriculture/Aquaculture/Animal Husbandry/Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criterion.

Q-6. What are the entitlements for supplies from the Domestic Tariff Area (DTA) to EOU?

Ans. Supplies from DTA to EOU units for use in their manufacture for exports will be eligible for benefits of deemed exports under Chapter 7 of FTP. DTA supplier shall be eligible for relevant entitlements under Chapter 7 of FTP, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under.

(Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorisations at rates and for items mentioned in HBP.

Other entitlements of EOU units are as under:

- (a) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (b) Units will be allowed to retain 100% of its export earnings in the Exchange Earner's Foreign Currency (EEFC) account.
- (c) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:
 - (i) The unit has turnover of Rs.5 crore or above;

(ii) The unit is in existence for at least three years; and

(iii) The unit:

(1) has achieved positive NFE / export obligation wherever applicable;

(2) has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made there under, on account of fraud / collusion / wilful misstatement / suppression of facts or contravention of any of the provisions thereof;

(d) 100% Foreign Direct Investment (FDI) investment permitted through automatic route.

Q-7. Can infrastructural facilities be shared among EOUs?

Ans. Yes, the Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs and it shall forward its recommendation to the Board of Approval for its consideration. While accepting such proposals, the NFE obligations of the units shall not be altered. However, sharing of facilities between EOUs and SEZ units shall not be permitted

Q-8. Can second hand goods be imported by EOUs?

Ans. Second hand capital goods, without any age limit, may also be imported with or without payment of duty/ taxes (as provided under Para 6.01(d) (ii) of the FTP)

Q-9. What are the guidelines for monitoring the performance of EOU Units?

Ans. 1. The annual review of performance of each operational unit and its compliance with the conditions of approval shall be undertaken by the Development Commissioner before the end of the first quarter of the following financial year;

2. A summary of annual performance review will be sent by each Development Commissioner to the Ministry of Commerce for information under the three formats indicated below latest by 30th September every year;

Proforma I: Comparative statement of performance and monitoring as compared to previous year;

Proforma II: Summary of annual performance of the EOU units, sector – wise with sectoral sub – totals.

Proforma III: Unit-wise statement on Net Foreign Exchange (NFE) showing the result of review.

Q-10. What are the differences between Special Economic Zones (SEZs) and Export Oriented Units (EOUs)?

Ans. Although both EOUs and SEZs, were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore, a foreign territory. Thus, any sale made from an SEZ to DTA is considered as import for the DTA unit. Moreover, any supply from DTA to an SEZ is considered as export. On the other hand supplies from DTA to an EOU are considered as deemed exports.

Being a clearly demarcated area, there is substantial control over the physical movement of goods to and from SEZs, but the same cannot be said about EOUs. In terms of the fiscal treatment, SEZs are zero rates and hence exempt from payment of GST while in the case of EOUs, the principle of refund of GST paid is applicable.

Minimum investment in plant and machinery and building is Rs 1 crore for EOUs. This should be before commencement of commercial production, there is no such limit for SEZ

Q-11. How can an EOU Exit from the EOU Scheme?

(a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by Department of Commerce (DoC), at price to be determined by that agency.

(d) An EOU unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing Export Promotion Capital Goods (EPCG) Scheme for DTA Units. This will be subject to fulfilment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

(e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs authorities. On the basis of "No Dues Certificate" so issued by the Customs authorities, unit shall apply to DC for final exit. In case there is no proceeding pending under The Foreign Trade (Development and Regulation) Act, as amended, DC shall issue final exit order within a period of 7 working days. Between "No Dues Certificate" issued by Customs authorities and final exit order by DC, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorisation / Duty Free Import Authorization (DFIA) / Duty Drawback. Since the duty calculations and dues are disputed and take a long time, a Bank Guarantee (BG) / Bond / Instalment processes backed by BG shall be provided for expediting the exit process.

(f) In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty/GST, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after exit would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged customs duty on capital goods at the time of removal of such capital goods in DTA when exit.

(g) An EOU unit may also be permitted by DC to exit under Advance Authorisation as one-time option. This will be subject to fulfilment of positive NFE criteria.

(GST)

Q12. Whether the EOU scheme will continue to be in operation in the GST regime and whether EOU is required to take registration under the GST law?

Ans. EOU is like any other supplier under GST and all the provisions of the GST Law will apply. However, the benefit of Basic Customs Duty exemption on imports will continue.

Q13. What tax benefits will be available to EOU scheme in GST regime?

Ans. The duty free imports under GST regime will be restricted to Basic Custom duty. Exemption from the additional duties of Customs, if any under Section 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 and exemption from Central Excise duty will be available for goods specified under the Fourth Schedule to the Central Excise Act. IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible, like any other registered person, to take Input Tax Credit of the said GST paid by its suppliers.

Q14. Whether supplies to or from EOU will be exempted from GST?

Ans. No, under the GST law, IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible to take Input Tax Credit of the said GST paid by its suppliers.

The supplies from EOU will not be exempted from GST, except in the case of zero rated supplies defined under section 16 of the IGST Act, i.e. Supplies made by EOU in the form of physical export or supplies to a SEZ unit or SEZ Developer for authorized operations.

Q15. What procedure will be followed by EOU to import goods without payment of Customs duty in the GST regime?

Ans. To avail such import benefits, EOUs will have to follow the procedure under the Customs (Import of Goods and Concessional Rate of Duty) Rules, 2017.

Q16. Can an EOU can clear goods to another EOU (Inter-unit transfer)? And whether an EOU can send goods for carrying out job work on such goods? In such situations, how will the tax liability be discharged?

Ans. Supply of goods from one EOU to another EOU will be treated as any other supply under GST Law. An EOU can send goods for job work as per section 143 of the CGST Act, 2017 and rule 45 of the CGST Rules, 2017 and the tax liability shall be discharged accordingly.