

FAQs on SEZ

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

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

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

Ans. DTA, as defined in the SEZ Act means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the SEZ. Hence, all the territory outside the SEZ is the DTA.

Q3. What are the salient features of SEZ scheme?

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

- All Goods and services supplied by SEZ units to DTA are treated as imports into India and subject to all procedures and rules applicable in case of normal imports into India.
- SEZs are deemed to be an airport, port, Land Custom Stations, and Inland Container Depot under the Customs Act.
- SEZs ensure ease of doing business by reducing procedural complexities, bureaucratic hassles and barriers raised by monetary, trade, fiscal, tariff and labor policies
- 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 the guidelines for setting up of SEZs?

Ans. The guidelines (specified in Section 5 of the SEZ Act, 2005) for approval of SEZs 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.
- Bonded and secure area where the developer can create state of the art infrastructure

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

Ans. Department of Commerce (DOC): The function of DOC is the formulation and review of the policy including regulatory framework for SEZs. The highest decision making body for SEZs namely the Board of Approval (BOA) is also administered by the DOC.

Office of Development Commissioner: The office of the Development Commissioner (DC) administers the regulatory framework of SEZs. This includes administrative approvals, either by the Unit Approval Committee or the DC on file. The customs officers are responsible for the customs clearances of goods and services to and fro from the SEZ.

Developer: A Developer means a person who, or a State Government which, has been granted a LOA for setting up and infrastructure development of the SEZ. While, most SEZs have only a single developer, there is a provision in Section 3(10) of SEZ Act to approve more than one Developer in cases where one Developer does not have in his possession the minimum area of contiguous land, for setting up a SEZ.

Co-developer: A 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, is granted an LOA by the BOA for the same.

SEZ Units: Units are entities that are primarily who have been allotted LOA for engaging in exports (including deemed exports), imports, domestic sourcing and domestic sales of goods and services under the SEZ regulatory framework. It also includes Offshore Banking Units and Units 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(s) 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 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 for a developer?

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-B 1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the BOA while approving the proposal.]

Q10. What is 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 time, 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 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 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, as per Rule 74A, 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 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