

A Handbook on Special Economic Zones



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

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Foreword

It is a matter of great pleasure that Committee on Trade Laws and WTO has decided to issue publications on emerging areas for Chartered Accountants in the field of International Trade Laws and WTO.

In the new world trade environment, Indian economy is beaming like anything. With the government welcoming foreign investment, with policies designed to ease entry, location decisions, and choice of technology, production, import and export FDI is bound to increase exponentially. Investors are also attracted to India by its rich mineral and agricultural resources. The country boasts a well-established major manufacturing sector that encompasses almost all areas of activity.

A policy was introduced on 1.4.2000 for setting Special Economic Zones in the country with a view to provide an internationally competitive and hassle free environment for exports. The policy provided for setting up of SEZs in the public, private, joint sector or by State Governments. Some of the Export Processing Zones were also converted into Special Economic Zones. The units on the SEZs have to be a net foreign exchange earner but they are not subjected to any predetermined value addition or minimum export performance requirements.

It is largely felt that there is a lot of role for professionals like Chartered Accountants in this emerging field. This new trade order has its own imperatives and we need to develop ourselves in a position to render better services to our clients in the ever-changing market place and our strength is knowledge by which we can obtain more and more business and be of value to the society at large.

The present publication provides a comprehensive explanation of the various provisions under Special Economic Zones Act, 2005 and other related areas such as FTZs, EOUs, Software Technology Parks (STP), Electronic Hardware Technology Parks (EHTP), Bio- Technology Parks (BTP) and Agri- Export Zones (AEZ). I am sure that this publication will serve as a useful tool of information for Chartered Accountants in this emerging field. I appreciate the initiative taken by the Chairman of Committee on Trade Laws and WTO, CA. Rajkumar S. Adukia and all the Members of the Committee in bringing out this publication. I would also like to put on record the contribution of Shri J. P. Gadia who has prepared the basic draft of this publication.

New Delhi.
February 2, 2007

CA. T.N. Manoharan
President

Preface

The Special Economic Zones (SEZs) have been recognized as an effective tool for increasing exports. In order to make the package of fiscal benefits and incentives to the SEZs more effective, the Government of India enacted the Special Economic Zones Act in 2005. The Act became operative in February, 2006 after the SEZ Rules were notified. It was also envisaged that some of the existing Export Processing Zones would be converted into Special Economic Zones. Accordingly, the Government has converted Export Processing Zones located at Kandla and Surat (Gujarat), Cochin (Kerala), Santa Cruz (Mumbai-Maharashtra), Falta (West Bengal), Madras (Tamil Nadu), Visakhapatnam (Andhra Pradesh) and Noida (Uttar Pradesh) into Special Economic Zones. In addition, 3 new Special Economic Zones approved for establishment at Indore (Madhya Pradesh), Manikanchan – Salt Lake (Kolkata) and Jaipur have since commenced operations. In addition, approval has been given for setting up of 42 Special Economic Zones in various parts of the country in the private/joint sectors or by the State Government.

As there are lot of issues involved with the setting-up and operation of SEZs, the professionals like Chartered Accountants can provide consultancy in respect of joint ventures to be set up in the SEZs with inflow of FDI, processing of applications for SEZ developers as well as SEZ units.

To obviate this difficulty and to help Chartered Accountants wishing to develop an expertise in these matters, there is a need to explain the basic concepts, legal provisions and procedural aspects. The present publication is an attempt to provide guidance to Chartered Accountants in practice and in service and others concerned to have an insight in respect of Special Economic Zones. The publication tries to develop a lucid understanding of the relevant law and procedures in these regards. I sincerely hope that readers would find it useful. I am thankful to Shri J.P. Gadia who has painstakingly authored the basic draft of the publication. I would also like to thank Shri Balbir Singh, Shri Yogendra Garg, Director, Ministry of Commerce and CA. R Jayaprakash for lending their contribution in the study. I would like to place on record my sincere thanks to all the members of the Committee on Trade Laws and WTO for the year 2006-07 namely, CA. T. N. Manoharan, President, CA. Sunil Talati, Vice-President, CA. Manoj Fadnis, Vice-Chairman, CA. S. Gopalakrishnan, CA. Amarjit Chopra, CA. Harinderjit Singh, CA. Pankaj I. Jain, CA. V. Murali, CA. Uttam Prakash Agarwal, Shri Jitesh Khosla, Shri Sidharth Birla, CA. Bhavna G. Doshi, CA. Kishore S. Peshori, CA. Abhay V. Arolkar, CA. K. Ravi, CA. R. Panchapakesan, CA. V. Srinivasu, CA. Jagdeep Singh Chopra, CA. Venugopal C. Govindan Nair, Shri M. K. Anand, Joint Director, Ministry of Commerce & Industry and Shri P. K. Patni, Deputy Controller of Patent and Designs for rendering their support in bringing out this publication and all the initiatives taken by the Committee during the year.

Mumbai.
January 29, 2007

CA. Rajkumar S. Adukia
Chairman, Committee on Trade Laws and WTO

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Chapter 1

Introduction

Some of the earliest references of export processing zones (EPZ) date back to thirteen century in Spain. As per the ILO report, The Free Zone Consortium of Cadiz was founded in 1929. In Spain a free zone was set up before the First World War, but it took off only after the Second World War. In recent times, the first export processing zone (EPZ) was set up in 1959 at Shannon, in Ireland.

These zones are known by different names such as Free Trade Zones (FTZ), Industrial Free Zone, Export Processing Zones (EPZ), Bonded Free Zones, Maquiladoras (Mexico) and Special Economic Zones (China).

India was the first country to establish EPZ, at Kandla, in the Asia Pacific region in 1966. The proposal for setting up the Kandla Free Trade Zone (KAFTZ) was mooted in 1961, with the objective of facilitating the development of the Kutch region, to ensure greater utilization of Kandla Port and to create employment opportunities in the Kandla-Gandhidham area.

With a view to create an environment for achieving rapid growth in exports, The Government of India (GoI) announced a Special Economic Zone in the Export -Import Policy 2000.

Special Economic Zones (SEZs) are specifically delineated duty-free enclaves treated as a foreign territory for the purpose of industrial, service and trade operations, with exemption from customs duties and a more liberal regime in respect of other levies, foreign investment and other transactions

One of the earliest and the most famous Special Economic Zones were founded by the government of the People's Republic of China under Deng Xiaoping in the early 1980s. The most successful Special Economic Zone in China, Shenzhen, has developed from a small village into a city. In the late 1990s, when the then Commerce Minister of India, late Murasoli Maran, visited the special economic zones (SEZs) in China, he was motivated by the success of Chinese SEZs .Accordingly, The Government of India (GoI) first introduced the concept of SEZ in the Export -Import Policy 2000 with a view to provide an internationally competitive and hassle free environment for exports. Since the performance of EPZs fell far short of expectations due to various reasons, the SEZs were conceived as a much larger and more efficient form and the EPZ scheme was replaced with the "SEZ scheme"

All the existing eight Export Processing Zones located at Kandla and Surat (Gujarat), Cochin (Kerala), Santa Cruz (Maharashtra), Falta (West Bengal), Madras (Tamil Nadu), Visakhapatnam (Andhra Pradesh) and Noida (Uttar Pradesh) were converted into Special Economic Zones.

Further, in order to provide a significant thrust to the policy, the government enacted the Special Economic Zones Act 2005. The Act became operative in February 2006 after the SEZ rules were framed and notified

Chapter 2

2.1 Features of Special Economic Zones in India

What is special?

The word "Special" mainly means special economic systems and policies. That is, the central government gives SEZs special policies and flexible measures, allowing SEZs to utilize a special economic management system.

- Special tax incentives for foreign investments in the SEZs
- Greater independence on international trade activities
- Economic characteristics are represented as "4 primacies":
 - ❖ constructions primarily rely on attracting and utilizing foreign capitals;
 - ❖ primary economic forms are sino-foreign joint ventures and partnerships as well as wholly foreign-owned enterprises;
 - ❖ products are primarily export-oriented;
 - ❖ economic activities are primarily driven by market.
- SEZs are listed separately in the national planning (including financial planning) and have province-level authority on economic administration.

The main objectives of SEZ scheme can be briefly stated as:

- attract Foreign Direct Investment (FDI)
- earn foreign exchange and contribute to exchange rate stability
- boost the export sector, especially non traditional exports
- create employment opportunities
- introduce new technology
- develop backward regions
- stimulate sectors such as electronics, information technology, R & D, tourism, infrastructure and human resource development that are regarded as strategically important to the economy
- create backward & forward linkages to increase the output and raise the standard of local enterprise that supply goods and services to the zone

Unlike most of the international instances where zones are primarily developed by Governments, the Indian SEZ policy provides for development of these zones in the government, private or joint sector. This offers equal opportunity to both Indian and international private developers.

The salient features of the Special Economic Scheme include:

- no License required for import
- manufacturing, trading or services activities allowed
- full freedom of subcontracting

- no routine examination of export import cargo by customs authorities
- single window clearance
- financial incentives like tax holidays, duty free imports and exports
- high quality infrastructure
- strategic location and market access

2.2 Projected Gains and some success stories of SEZ in India

The initial response to the SEZ policy has been tremendous. Over 650 proposals received from 21 states and 3 union territories till 13.12.2006 involve investors from both India and abroad. Up to end October, 2006, approvals have been granted for 237 proposals and 164 in principle approvals been given by the Board of Approval. 50 SEZs have been notified as on 13.12.2006. A large number of these SEZs are for textiles and apparels, leather footwear, auto components, engineering and other sector specific SEZs, which would involve labour intensive manufacturing. The employment projected in these notified SEZs is over 5, 00,000.

Following are some of the gains that are projected to result from the Special Economic Zones* :

- investment of the order of US \$ 700 million expected by December 2006 in development of SEZs and units;
- projected investment by Dec.'07 Rs. 100,000 Crores including Rs. 25000 crores FDI;
- projected employment by Dec.'07, 5, 00,000 persons;
- SEZs expected to have strong backward and forward linkages with industries in the domestic tariff area;
- establishment of SEZs leading to fast growth of labour intensive manufacturing and services in the country.

Some of the SEZs with basic information regarding investment, location, employment etc. are listed below —:

- **NOKIA SEZ, Sriperumbudur**
 - ❖ US\$ 100 mn. invested
 - ❖ 3700 direct employment
 - ❖ 10000 indirect employment ;
 - ❖ expected employment 20000 by December 2007
 - ❖ producing 2.5 m handsets per month
- **Flextronics SEZ, Sriperumbudur**
 - ❖ US\$ 100 mn. Invested
 - ❖ production to commence in Jan'07
 - ❖ 1000 persons employed so far
- **SIPCOT – Motorola – Foxconn-Dell SEZ, Sriperumbudur**
 - ❖ investment of US\$ 200 mn.
 - ❖ direct Employment for 15000 persons

** (Source: <http://www.commerce.nic.in>)

- ❖ hub for high tech. manufacturing
- **Apache SEZ, Tada, A.P.**
 - ❖ investment of US\$ 50 mn.
 - ❖ employment for 25000 persons by June 2007
 - ❖ 500 persons being trained so far
- **Divvy's Laboratories, Andhra Pradesh**
 - ❖ commenced operations in September 2006
 - ❖ expected employment 8000 by April 2007
- **Rajiv Gandhi Technology Park, Chandigarh**
 - ❖ infosys Technologies has started setting up activities
 - ❖ 500 persons recruited and under training
 - ❖ expected employment by June2007 is 5000
- **Brandix Apparel SEZ, Vishakhapatnam, Andhra Pradesh**
 - ❖ textiles SEZ
 - ❖ investments of US \$100m
 - ❖ expected employment 60000 by March 2009
- **Quarkcity SEZ, Mohali, Punjab**
 - ❖ expected FDI of US\$ 0.5 bn
 - ❖ employment for 35000 persons
- **Hyderabad Gems-Hyderabad, Andhra Pradesh**
 - ❖ gems & Jewellery SEZ
 - ❖ investments of US \$100m
 - ❖ expected employment 30000 by March 2009
 - ❖ training 1000 girls already
- **ETL Infrastructure, Chennai**
 - ❖ IT/ITES SEZ
 - ❖ first Gold rated Green building; 30% energy saving
 - ❖ 4000 persons already working

Chapter 3

EOU SCHEME

The concept of EPZ was complemented by schemes like Export oriented scheme which was introduced by the Ministry of Commerce in 1980 vide resolution dated 31st December 1980. The scheme is contained under Chapter 6 of Foreign Trade Policy as amended from time to time and chapter 6 of Handbook of procedures, vol 1.amended from time to time and chapter 6 of Handbook of procedures, vol 1.

Over the years the Scheme underwent various changes and its scope also expanded substantially as compared to the initial Scheme, which was basically for manufacturing sector with certain minimum value addition in terms of export earnings.

As on 31st December 2005, 1924 units were in operation under the EOU scheme.

The EOUs are mainly concentrated in Textiles and Yarn, Food Processing, Electronics, Chemicals, Plastics, Granites and Minerals/Ores. Exports from EOUs during 2004-2005 were of the order of Rs.36806.17 crores as compared to the export of Rs.28827.58 crores achieved during 2003-2004, registering a growth of 27.68%.

A comparison between EOU and SEZ

1. Supplies to SEZ from DTA are exports and all export benefits are available while supplies to EOU from DTA are deemed exports and Indian suppliers can claim benefits of deemed export.
2. SEZ units have to be located within specified zones developed, EOU units can be set up anywhere
3. There is physical control over movement of goods in SEZ, there is no physical control over goods to individual EOU
4. Minimum investment in plant and machinery is Rs 1 crore for EOU before commencement of commercial production. There is no limit for SEZ.
5. Fast Track Clearance Scheme (FTCS) for clearances of imported consignments is available for EOU. In case of SEZ units, customs clearance for export and import is obtained within the zone itself
6. In case of EOU, sale within India should be on payment of excise duty. In certain cases excise duty payable will be only 50%/30% of normal customs duty payable on such goods if imported into India. In case of supplies from SEZ to DTA, normal customs duty as payable on import of similar goods is payable
7. EOU unit can sell in DTA up to 50% of the FOB value of sales of preceding year, subject to fulfillment of positive NFE on payment of concessional rate of duty. SEZ have to attain positive NFE
8. Restrictions under Companies Act on managerial remuneration are less applicable to SEZ units
9. An EOU can exit with permission of Development Commissioner, on payment of applicable duties. SEZ unit has to physically go out of SEZ
10. In case of EOU, CST paid on purchases is refundable (but not local tax) if goods are used for production (and not for services). An SEZ unit does not have to pay CST.

11. 100% foreign equity is permissible in SEZ, except in a few cases. In case of EOUs, restrictions on FDI are slightly more
12. SEZ units are exempted from External Commercial borrowings (ECB) restrictions laid down by RBI
13. EOU has no exemption from labour laws. State Government can relax certain provisions of labour laws in case of SEZs
14. SEZ are in specific locations where infrastructure is generally better
15. SEZ have more freedom of operations within zone compared to EOU.

Similarities

1. Import without payment of customs duty
2. Domestic purchase without payment of excise duty
3. Import of second hand capital goods
4. Positive NFE required
5. Prescribed bond to be executed (B-17 in case of EOU and form prescribed in SEZ Rules in case of SEZ)
6. Prescribed records required
7. No physical supervision of customs/excise authorities over production and clearances
8. All final production to be exported except rejects up to prescribed limit
9. Sub contracting of production outside on job work permissible after obtaining necessary permission on an annual basis
10. Job work for exports permitted
11. Samples can be sold/given free within prescribed limits
12. Unutilized material can be disposed of on payment of applicable duties
13. All foreign exchange earnings can be retained in EEFC Account in foreign exchange

Which scheme to choose

If major production of the company is towards DTA sale and only partly towards export, schemes like DEPB or advance authorization are suitable. Scheme of duty drawback is simple and easy to operate, preferred when All Industry Rate is good

When undertaking is predominantly export oriented and requirement of imported capital goods and imported raw material is high, schemes like EOU and SEZ are suitable.

The tax exemption on EOUs is available only upto the year 2009. Hence, units prefer to open up in SEZs. Infrastructure available is better in SEZs generally. Customs clearance for exports is obtained within the SEZ itself which is convenient. On the other hand, flexibility available to EOUs is much more compared to an SEZ unit. EOUs can be set up at any place declared as a Warehousing station under the Customs Act while SEZs have to be located in the specified locations where such zones are developed. Even within the factory of the manufacturer, a separate unit for EOU can be set up, even use of common utilities is possible. This reduces administrative and other costs. If export orders dry up, conversion of EOU to DTA is comparatively very easy as compared to SEZ where the unit has to be physically moved out of the zone after de bonding (exit).

Chapter 4

Overview of the Special Economic Zones Act, 2005

Previously Special Economic Zones in India were governed by Chapter X-A of the Customs Act, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 and Chapter 7 and 7A of Foreign Trade Policy. However, w.e.f. 10th February, 2006 the activities relating to Special Economic Zones are guided by the provisions contained in the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006. After the enactment of the Special Economic Zones Act, 2005 Chapter X-A of the Customs Act, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 are not in operation.

Special Economic Zones Act 2005 consists of 8 chapters, 58 sections and 3 schedules. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. (Section 51)

Bird's eye view of the Special Economic Zones Act, 2005

Chapter	Sections	Title
I	1-2	Preliminary
II	3-7	Establishment of SEZ
III	8-10	Constitution of Board of Approval
IV	11-12	Development Commissioner
V	13-25	Single Window Clearance
VI	26-30	Special Fiscal provisions for SEZ
VII	31-41	Special Economic Zone Authority
VIII	42-58	Miscellaneous
The First Schedule		Enactments
The Second Schedule		Modifications of the Income Tax Act-1961
The third schedule	Part I	Amendments to certain Enactments
	Part II	Amendments to the Banking Regulation Act,1949
	Part III	Amendments to the Indian Stamp Act,1899

The Special Economic Zones Act 2005 provides for the following:

1. procedure for making proposal to establish SEZ (Sec 3)
2. establishment of SEZ with the approval from Board of Approvals (Sec 4)
3. notifying an area as SEZ by Central Government (Sec 5)
4. approval by Board of Approval for establishment of SEZ (Sec 8 to 10)
5. development Commissioner as administrative Authority for the SEZ (Sec 11 and 12)
6. approval Committee to approve setting up of an unit in SEZ (Sec 13 and 14)
7. single window clearance by Approval Committee for setting up unit in SEZ, setting up an OBU and setting up an IFSC.(Sec 15 to 20)
8. enforcement officer or agency for notified offences (Sec 21 and 22)
9. special civil courts and criminal courts to try notified offences and appeal to High Court (Sec 23 and 24)
10. special Fiscal provisions for special economic zones(Sec 26 to 30)
11. establishment of SEZ Authority (Sec 31 to 41)
12. reference of dispute to arbitration (Sec 42 and 43)
13. exemptions and relaxations from provisions of some Central Acts (Sec 49 and 54)
14. power of the Central Government to make rules and to remove difficulties(Sec 55 and 56)

Chapter 5

5.1 Overview of the Special Economic Zones Rules, 2006

The policy relating to special economic zones is contained in Special Economic Rules, 2006 notified in the Gazette of India, Extraordinary No. GSR 54 (E), dated 10.2.2006.

The Rules contain 8 chapters, 77 rules, 11 forms - A to K and 2 Annexures

Bird's eye view of the Special Economic Zones Rules, 2006

Chapter	Rules	Title
I	1-2	Preliminary
II	3-16	Procedure for establishment of SEZ
III	17-21	Procedure for establishment of an unit
IV	22-46	Terms and conditions subject to which entrepreneur and developers shall be entitled to exemptions, drawbacks and concessions
V	47-52	Conditions subject to which goods may be removed from a SEZ to DTA
VI	53-54	Foreign Exchange earning-Requirements and Monitoring
VII	55-69	Appeal
VIII	70-77	Miscellaneous

The significant features of the Special Economic Zones Rules 2006 are as follows:

1. simplification of procedures for development, operation, and maintenance of the Special Economic Zones and for setting up and conducting business in SEZs;
2. single window clearance for setting up of an SEZ;
3. single window clearance for setting up a unit in a Special Economic Zone;
4. single Window clearance on matters relating to Central as well as State Governments;
5. simplified compliance procedures and documentation with an emphasis on self-certification;

6. a wide range of services can be rendered from SEZs;
7. documentation for various activities of the units has been reduced to the barest minimum with an emphasis on self-certification.
8. no requirement for providing bank guarantees, thereby reducing transaction costs;
9. contract manufacturing for foreign principals allowed;
10. option to obtain sub-contracting permission at the initial approval stage;

5.2 Overview of Special Economic Zones (Amendment) Rules, 2006

An amendment was made in the Special Economic Zones Rules by way of -The Special economic Zones (Amendment) Rules, 2006 which came into force on 10.08.2006 (vide Notification NO G.S.R. 470(E), dated 10-8-2006)

The effect of this notification which is mainly on area requirements and processing area can be summarized as below.

S.No	SEZ Type	Minimum Area		Minimum Area for Specific State(s)	Minimum Processing Area	
		OLD	NEW		OLD	NEW
1	Multi Product	1000 hectares	1000 hectares	200 hectares	25%	35%
2	Multi Service	100 hectares	100 hectares	100 hectares	25%	25%
3	Specific Sector	100 hectares	100 hectares	50 hectares	50%	50%
4	Electronic Hardware and Software	10 hectares (with 1 Lac square meter built up area)	10 hectares (with 1 Lac square meter built up area)	10 hectares (with 1 Lac square meter built up area)	50%	50%
5	Bio Technology/Non conventional energy	10 hectares	10 hectares (With a minimum built-up area of forty thousand square meters)	10 hectares (With a minimum built-up area of forty thousand square meters)	50%	50%
6	Gems and Jewellery Sector	10 hectares	10 hectares (With a minimum built-up area of fifty thousand square meters)	10 hectares (With a minimum built-up area of fifty thousand square meters)	50%	50%
7	Free Trade and warehousing Zone	40 hectares (with 1 Lac	40 hectares (with 1 Lac	40 hectares	-	-

		square meter built up area)	square meter built up area)	(with 1 Lac square meter built up area		
8	Stand alone	40 hectares (with 1 Lac square meter built up area)	40 hectares (with 1 Lac square meter built up area)	40 hectares (with 1 Lac square meter built up area)	-	50 %
9	Specific sector	No minimum area requirement but subject to max area not exceeding 20% of the processing area	No minimum area requirement but subject to max area not exceeding 20% of the processing area	No minimum area requirement but subject to max area not exceeding 20% of the processing area	-	-

Besides the above, the other changes made are as follows:

➤ **Infrastructure requirements relating to information technology**

A new rule – 5 A has been inserted detailing infrastructure facilities that a Developer of Information Technology specific SEZ should provide. They include:

- ❖ twenty four hour uninterrupted power supply at stable frequency;
- ❖ reliable connectivity for uninterrupted and secure data transmission;
- ❖ central air-conditioning system;
- ❖ ready to use, furnished plug and pay facility for end users.

➤ **A Developer was earlier permitted to allot land in the non-processing area for business and social purposes.**

The SEZ Amendment Rules have amended the above condition to the effect that no vacant land in the non processing area shall be leased for business and social purposes to any person except a Co-developer approved by the Board. Further, it has been provided that a Developer or Co-developer may lease completed infrastructure along with vacant land appurtenant thereto.

➤ **Previously used Plant & Machinery**

It has been provided that any proposal for setting up SEZ Unit by using plant and machinery previously used for any purpose in the Domestic Tariff Area (“DTA”) shall not be considered.

➤ **Trading activity in the SEZ**

The SEZ Rules have been amended to provide to the effect that for claiming Income-tax benefits, the term trading shall mean import for the purpose of re-export. This means profits from trading (exports) of locally procured goods shall not be eligible for Income-tax benefits.

Chapter 6

Authorities under SEZ Act

- Board of Approval
- Development Commissioner
- Approval Committee
- Special Economic Zone Authority

Board of Approval

Board of approval is apex body in department. Board has the duty to promote and ensure orderly development of SEZ. The Special secretary to Government of India in Ministry of Commerce and industry, Department of Commerce is chairperson of Board. The Board consists of 18 members and a nominee of each state government concerned (Notification No SO (195(E) dated 10/02/2006 and 314(E) dated 13/03/2006)

Major Functions of Board-Sec 9(2)

- granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
- granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;
- granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India), in the Special Economic Zones for its development, operation and maintenance;
- granting of approval or rejecting of proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
- granting, notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951, a license to an industrial undertaking if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zones;
- suspension of the letter of approval granted to a Developer and appointment of an Administrator
- disposing of appeals
- performing such other functions as may be assigned to it by the Central Government.

Development Commissioner

Each Zone is headed by Development Commissioner who is also heading approval committee. The Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more Special Economic Zones. Sec 11 of Special Economic Zones Act, 2005. Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the Special Economic Zone and promotion of exports there from. Sec 12(1) of Special Economic Zone Act, 2005.

Major functions of Development Commissioner- Sec 12(2)

- guide the entrepreneurs for setting up of units in the Special Economic Zone
- ensure and take suitable steps for effective promotion of exports from the Special Economic Zone
- ensure proper co-ordination with the Central Government or State Government Departments concerned or agencies with respect to,
- monitor the performance of the Developer and the Units in a Special Economic Zone
- discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and
- discharge such other functions as may be delegated to him by the Board.

Approval Committee

Approval committees give approval for setting up a unit in SPECIAL ECONOMIC ZONES. The committee consists of:

- the Development Commissioner in charge of the SEZ
- two officers of the Central Government to be nominated by that Government—Members
- two officers of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with revenue
- one officer of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with Economic affairs (financial services);
- two officers of the State Government concerned to be nominated by that State Government and
- representative of the Developer concerned

Powers and functions of Approval Committee (Section 14)

- approve the import or procurement of goods from the Domestic Tariff Area, in the SEZ for carrying on the authorised operations by a Developer;
- approve the providing of services by a service provider, from outside India, or from the Domestic Tariff Area, for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the Special Economic Zone
- allow, on receipt of approval foreign collaborations and foreign direct investments (including investments by a person outside India) for setting up a Unit;
- monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, has been granted to the Developer or entrepreneur; and
- perform such other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

SEZ AUTHORITY (Section 31)

The Central Government shall constitute the SEZ Authority to exercise the powers conferred and discharge the functions as per the provisions of the SEZ Act.

The Authority shall be a body corporate having perpetual succession and a common seal, with a power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue and be sued.

The head office of every Authority shall be at such place as the Central Government may specify but any Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

Every Authority shall consist of

- the Development Commissioner of the SEZ
- two officers of the Central Government to be nominated by that Government having knowledge of, or experience in, dealing with matters relating to Special Economic Zones
- an officer of the Government of India in the Ministry or Department dealing with Commerce on matters relating to Special Economic Zone
- not more than two persons, being entrepreneurs or their nominee, to be nominated by the Central Government

Functions of the Authority (Section 34)

- the development of infrastructure in the SEZ;
- promoting exports from the SEZ;
- reviewing the functioning and performance of the SEZ;
- levy user or service charges or fees or rent for the use of properties belonging to the Authority;
- performing such other functions as may be prescribed.

It is to be noted that till date no SEZ Authority has been formed by the Central Government

Chapter 7

Setting up of SEZ

7.1 Key definitions:

Developer means a person who, or a State Government which, has been granted by the Central Government a letter of approval and includes an Authority and a Co-Developer (Section 2(g) of SEZ Act, 2005)

“Person” includes

- an individual, whether resident in India or outside India,
- a Hindu undivided family,
- co-operative society,
- a company, whether incorporated in India or outside India,
- a firm,
- proprietary concern, or
- an association of persons or
- body of individuals, whether incorporated or not,
- local authority and
- any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, authority or company; (Section 2(v) of SEZ Act, 2005)

7.2 Proposal for setting up SEZ

(i) any person, who intends to set up a Special Economic Zone, may, after identifying the area make a proposal in Form A to either of the following

(a) State Government concerned

OR

(b) Board of Approval

- The State Government shall forward the proposals received to the Board of Approval (Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce, Udyog Bhavan, New Delhi – 110011) along with its recommendations, within forty-five days of receipt of such proposal:

OR

- Board of Approval for the purpose of setting up the Special Economic Zone and after that obtain the concurrence of Sate Government with in six months.

- (ii) Central Government may *suo moto* set up and notify the Special Economic Zone ;—
- after consulting the State Government concerned;
 - without referring the proposal for setting up the Special Economic Zone to the Board; and
 - after identifying the area

There is no application fee for applying for setting up of SEZ

7.3 Kinds of SEZ

- **SEZ for multi-product** means a SEZ where Units may be set up for manufacture of two or more goods in a sector or goods falling in two or more sectors or for trading and warehousing or rendering of two or more services in a sector or rendering of services falling in two or more sectors.(Rule 2(1)(za) of SEZ Rules,2006)
- **SEZ for specific sector** means a SEZ meant exclusively for one or more products in a sector or one or more services in a sector (Rule 2(1)(zb) of SEZ Rules,2006)
- **SEZ in a port or airport** means a SEZ in an existing port or airport for manufacture of goods in two or more goods in sector or goods falling in two or more sectors or for trading and warehousing or rendering of services; (Rule 2(1)(zc) of SEZ Rules,2006)

7.4 Guidelines for notifying Special Economic Zone- Sec 5

The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely:-

- 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 infrastructure facilities; and
- maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

7.5 Infrastructure facilities

A new rule- Rule 5 A has been inserted vide Special Economic Zones (Amendment) Rules, 2006 Accordingly, in case of a Special Economic Zone relating to information technology, the following facilities shall be ensured, namely:—

- twenty four hour uninterrupted power supply at stable frequency;
- reliable connectivity for uninterrupted and secure data transmission;
- central air-conditioning system;
- ready to use, furnished plug and pay facility for end users.

A Developer was earlier permitted to allot land in the non-processing area for business and social purposes. The SEZ Amendment Rules have amended the above condition to the effect that no vacant land in the non processing area shall be leased for business and social purposes to any person except

a Co-developer approved by the Board. Further, it has been provided that a Developer or Co-developer may lease completed infrastructure along with vacant land appurtenant thereto.

7.6 Letter of approval to entrepreneur

The Central Government shall, within thirty days of the communication received by it from board may grant a letter of approval in Form B to the person or the State Government concerned or in Form C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incorporating additional conditions, if any, specified by the Board while approving the proposal (Rule 6)

The 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, as may be prescribed, for setting up a Special Economic Zone and in such cases, each Developer shall be considered as a Developer in respect of the land in his possession - Sec 3(10)

Every person, whose proposal has been approved by the Board and who, or which, has been granted letter of approval by the Central Government, shall be considered as a Co-Developer of the Special Economic Zone - sec 3(12)

The letter of approval of a Developer shall be valid for a period of three years within which time, effective steps shall be taken by the Developer to implement the approved proposal. Board may, if it is satisfied, may extend the validity period for a further period not exceeding two years-Rule 6

Cancellation of Letter of approval -Sec 16 of The Special Economic Zones Act, 2005

- The approval Committee may at any time if it has any reason to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval
- No such letter of approval shall be cancelled unless the entrepreneur has been afforded a reasonable opportunity of being heard.

7.7 Equity Participation of developer -Rule 5(4)

The Developer or Co-Developer shall have at least 26% of the equity in the entity proposing to create business, residential or recreational facilities in a Special Economic Zone in case such development is proposed to be carried out through a separate entity or a special purpose vehicle being a company formed and registered under the Companies Act, 1956.

7.8 Specific requirements for SEZ-Rule 5(5)

Before recommending any proposal for setting up of a SEZ, the State Government to endeavor that following are made available in the State to the proposed SEZ and Developer

- exemption from the State and local taxes, levies and duties
- exemption from electricity duty or taxes on sale, of self generated or purchased electric power
- allow generation, transmission and distribution of power within a SEZ
- providing water, electricity and such other services,

- delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 and other related Acts in relation to the unit
- declaration of the Special Economic Zone as a Public Utility Service under the Industrial Disputes Act, 1947
- providing single point clearance system to the Developer and unit under the State Acts and rules

7.9 Import and procurement of Goods by the developer

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 Development Commissioner in Form E for placing the same before the Approval Committee for consideration. (Rule 12 (6))

In order to avail exemptions, drawback and concessions, The Developer shall submit Quarterly Report on import and procurement of goods from the Domestic Tariff Area, utilization of the same and the stock in hand, in Form E to the Development Commissioner and the Specified Officer and the Development Commissioner shall place the same before the Approval Committee. (Rule 22(4))

The Developer shall submit a half-yearly certificate for the period ending 31st March and 30th September of every financial year regarding utilization of goods from an independent Chartered Engineer, other than the one who has given a certificate for the purpose of sub-rule (2), to Development Commissioner and Specified Officer and every certificate under this sub rule shall be filed within thirty days of the period specified, as the case may be.

7.10 Checklist for the proposals to be taken by Board of Approval

“A checklist in the following format may be submitted by the applicant in respect of all the proposals of SEZs, besides the existing requirement of submission of Form A and project reports.

1. Name of the Developer.
2. Proposed area of the location of the SEZ.
3. Status of recommendation of the proposal by the State Government (if available).
4. Whether proposal is for formal or in-principle approval? (In case land is in possession of the promoter, it is considered for formal approval)
5. Is it a multi-product SEZ?
6. If it is a sector specific SEZ, the sector is.
7. Whether it meets the area requirements.
8. Area of the SEZ (in hectares)
9. Whether Form- A has been filed?
10. Whether undertaking and affidavit has been submitted?
11. Whether project report has been submitted?
12. Whether land is owned/ leased and is in possession of the Developer?
13. Does the proposal meet the area requirements of the Rules?
14. Whether the land has existing structures or is vacant?
15. Whether the land is contiguous?
16. Projected investment in the project.

17. Projected exports from the project.
18. Projected employment from the project.
19. Share capital and Reserves of the Developer Company.
20. Source of funds for the project.
21. Audited Accounts of the Developer for last 3 Years (for all the constituents in case the Developer is a SPV). If the company is a new company, audited accounts of Flagship Company may be provided.
22. Extent of FDI
23. Source of FDI
24. Whether provisions contained in the Press Note No. 5 (2005 Series), issued by the Ministry of Commerce and Industry have been followed in respect of Telecom/IT SEZ development?

Chapter 8

8.1 Processing and Non-processing area

- The Development Commissioner of the SEZ shall be the authority for demarcating the areas within the SEZ(Rule 11(1) of The Special Economic Zones Rules,2006)
- Only authorised persons shall be allowed to enter the processing area of the SEZ(Rule 11(4) of The Special Economic Zones Rules,2006)
- The land or built up space in the processing area or FTWZ shall be given on lease only to the entrepreneurs holding a valid Letter of Approval issued under Rule 19 and the lease period shall be co-terminus with the validity of the Letter of Approval(Rule 11(5) of The Special Economic Zones Rules,2006)
- The Developer may with the prior approval of the Approval Committee grant on lease land or built up space for creating facilities such as canteen, public telephone booths, first aid centres, crèche and such other facilities as may be requires for the exclusive use of the unit(proviso to Rule 11(5) of The Special Economic Zones Rules,2006)
- The developer may allot land in the processing area on lease basis to a person desiring to create infrastructure facilities for use by prospective units.(Rule 11(8) of The Special Economic Zones Rules,2006)
- The developer shall not sell the land in a SEZ(Rule 11(9) of The Special Economic Zones Rules,2006)
- No vacant land in the non-processing area shall be leased for business and social purposes such as educational institutions, hospitals, hotels, recreation and entertainment facilities, residential and business complexes, to any person except a co-developer approved by the Board. However, the developer or co-developer may lease the completed infrastructure along with the vacant land appurtenant thereto for such purposes (amended Rule 11(10) of The Special Economic Zones Rules,2006)
- The movement of goods to and from non-processing area to a processing area and from one processing area of Special Economic Zone to a different processing area of the same Special Economic Zone shall be under serially numbered challans pre authenticated by the owner or Managing Director or working partner or the company secretary or by any person duly authorized in this behalf by the company or firm, as the case may be, and the challans shall contain complete description of goods

8.2 Identity cards

- The entry of persons to the processing area of the Special Economic Zone shall be regulated by the Development Commissioner through issue of identity cards
- The identity card shall be valid up to a period of five years and shall be issued,in the format given in Form K, to the entrepreneurs and regular employees of the Units
- Temporary identity card may be issued by the Development Commissioner to the casual visitors and contractors- (Rule 70 of Special Economic Zones ,2006)

Chapter 9

Establishment of SEZ-units

9.1 Key definitions

"Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after commencement of this Act (Section 2(zc) of Special Economic Zones Act, 2005)

"Entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15 (Section 2(j) of Special Economic Zones Act, 2005)

"Existing Unit" means every Unit which has been set up on or before the commencement of this Act (Section 2(l) of Special Economic Zones Act, 2005 setting up of unit)

9.2 Proposal for approval of unit

New Unit -Any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned
Existing Unit -An existing Unit shall be deemed to have been set up in accordance with the provisions of SEZ Act,2005 and such Units shall not require approval under the SEZ Act, 2005. (Section 15(1) of SEZ Act,2005)

A consolidated application seeking permission for setting up of a Unit and other clearances has to be made to the Development Commissioner, in Form F, in five copies, with a copy to the Developer. The Development Commissioner shall get the proposal scrutinized and get it placed before the Approval Committee for its consideration. The Approval Committee may approve or approve with modification or reject a proposal placed before it within fifteen days of its receipt. If proposal relates to foreign collaboration and FDI, the proposal shall be placed before the Board by the Development commissioner for its consideration. In such cases the Board shall approve or approve with modification or reject such proposal within forty-five days of its receipt. Approval Committee or the Board has to record the reasons, in writing, where it approves a proposal with modifications or where it rejects a proposal and Development Commissioner has to communicate such reasons to the person making the proposal.

9.3 General Requirements for getting approval

- Net foreign exchange earning requirement- The proposal meets with the positive net foreign exchange earning requirement
- Availability of infrastructure -Availability of space and other infrastructure support applied for is confirmed by the Developer in writing, by way of a provisional offer of space
- Environmental norms -The applicant undertakes to fulfill the environmental and pollution control norms.

- Proof of residence-The applicant submits proof of residence, namely, passport or ration card or driving license or voter identity card or any other proof of the proprietor or the partners of partnership firms or Directors of the Company, as the case may be, to the satisfaction of Development Commissioner;
- Income tax returns-The applicant submits the Income tax returns, along with annexures, of the Proprietor or Partners, or in the case of a company, audited balance sheet for the last three years

9.4 Sector specific requirements – Rule 18(3)

The proposal shall also fulfill the following sector specific requirements, namely:-

- (a) export of high-grade iron ore that is sixty-four per cent, Fe and above, except iron ore of Goa origin and Redi origin, which would be subject to approval of Board
- (b) no sub-contracting or job work of polyester yarn shall be permitted in Domestic Tariff Area or in Export Oriented Unit or Units in other Special Economic Zone:

This restriction shall not apply to the Units which intend to send the fabric, made by them out of polyester or texturised yarn, for subcontracting but the third party exports shall not be permitted

9.5 Proposals not to be considered- Rule 18(4)

- (a) Recycling of plastic scrap or waste;
- (b) Enhancement of the approved import quantum of plastic waste and scrap beyond the average annual import quantum of the unit since its commencement of operation to the existing Units;
- (c) Processing of garments or used clothing or secondary textiles materials and other recyclable textile materials into clipping or rags or industrial wipers or shoddy wool or yarn or blankets or shawls;
- (d) Import of other used goods for recycling;
 - Reconditioning, repair and reengineering may be permitted subject to the condition that exports shall have one to one correlation with imports and all the reconditioned or repaired or re-engineered products and scrap or remnants or waste shall be exported and none of these goods shall be allowed to be sold in the Domestic Tariff Area or destroyed;
- (e) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies unless it fulfils the conditions indicated in the Import Trade Control (Harmonized System) Classifications of export and import items;
- (f) If there is any instance of violation of law or public policy by the promoters, having a bearing on the merits of the proposal.
- (g) The use of any plant or machinery previously used for any purpose in Domestic Tariff Area. (Inserted by Special Economic Zones (Amendment) Rules,2006

9.6 Conditions for services provided to overseas entities - Rule 18 (6)

Overseas Entity means a non-resident or a person of foreign origin and includes a company not incorporated in India

Units may also be setup for providing services or manufacturing services to Overseas Entities subject to following conditions, namely:-

- (a) capital goods, raw materials including consumables sub-assemblies, components, and semi-finished goods shall be supplied by the Overseas Entity free of cost;
- (b) capital goods for setting up such facilities may also be supplied on loan or lease basis, provided the notional value of such capital goods shall be taken into account for calculation of Net Foreign Exchange Earnings.
- (c) finished goods shall be exported out of the country or transferred to the Customs Bonded Warehouse to be maintained by the overseas entity;
- (d) the Unit shall receive the consideration for its manufacturing services in convertible foreign exchange directly from the said overseas entity;
- (e) separate accounts shall be maintained for the manufacturing and service activity,

in case the said manufacturing facility is used by the Unit for carrying out production on its own account.

9.7 Letter of Approval to a unit- Rule 19 (of The Special Economic Zones Rules, 2006)

- (a) The Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner
- (b) Further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing for a further period not exceeding two years on a request by the entrepreneur
- (c) The Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a chartered engineer's certificate to this effect is submitted by the entrepreneur.
- (d) If the Unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired.
- (e) The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years, at a time.
- (f) If an enterprise is operating both as a Domestic Tariff Area unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of accounts, but it shall not be necessary for the Special Economic Zone unit to be a separate legal entity:

9.8 Bond cum Legal undertaking- Rule 22 (1) (of The Special Economic Zones Rules, 2006)

- (i) The Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning;
- (ii) Bond-cum-Legal Undertaking executed by the Unit or the
- (iii) Developer including Co-Developer shall cover one or more of the following activities, namely: -

- ❖ the movement of goods between port of import or export and the Special Economic Zone;
 - ❖ the authorized operations, as applicable to Unit or Developer;
 - ❖ temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other temporary removals into Domestic Tariff Area without payment of duty;
 - ❖ re-import of exported goods.
- (iv) The Bond-cum-Legal Undertaking, where the entrepreneur or Developer is a company shall be executed by the Managing Director of the company or the Director(s) or any person who has or have been duly authorized for this purpose by a resolution of the Board of Directors of the company and shall be affixed with the common seal of the company
- (v) The value of the Bond-cum-Legal undertaking shall be equal to the amount of effective duties leviable on import or procurement from the Domestic Tariff Area of the projected requirement of capital goods, raw materials, spares, consumables, intermediates, components, parts, packing materials for three months as applicable but which will not be levied on account of admission of such goods into the Unit or the amount of effective duties leviable on import or procurement from Domestic Tariff Area of the projected requirements of goods for the authorized operation by the developer but will not be levied on account of admission of such goods into the Special Economic Zone;
- (vi) If the value of Bond-cum-Legal undertaking executed falls short on account of requirement of additional goods, the Unit or the Developer shall submit additional Bond-cum-Legal Undertaking;
- (vii) If no communication is received within seven working days from the date of its submission, the duly completed Bond-cum-legal undertaking executed by the Unit or Developer, in accordance with the rules above, as the case may be, shall be deemed to have been accepted,

9.9 Foreign Companies in SEZ- Rule 19(7)

Foreign companies can also set up manufacturing units as their branch operations in the Special Economic Zones in accordance with the provisions of Foreign Exchange Management (Foreign exchange derivatives contracts) Regulations, 2000.

9.10 Net Foreign Exchange Earnings

The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula, namely:-

$$\text{Positive Net Foreign Exchange} = A - B > 0$$

Where:

A: is Free on Board value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products, namely: -

- a) Supply of goods against Advance Licence or Duty Free Replenishment Certificate under the Duty Exemption or Remission Scheme or Diamond Imprest Licence under the Foreign Trade Policy;
- b) Supply of capital goods to holders of licence under the Export Promotion Capital Goods scheme under the Foreign Trade Policy;

- c) Supply of goods to projects financed by multilateral or bilateral agencies or funds as notified by the Department of Economic Affairs, Ministry of Finance under International Competitive Bidding in accordance with the procedures of those agencies or funds, where the legal agreements provide for tender evaluation without including the customs duty;
- d) Supply of capital goods, including those in unassembled or disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of production and spares to the extent of ten per cent of the free on rail value to fertilizer plants;
- e) Supply of goods to any project or purpose in respect of which the Ministry of Finance, by a notification, permits the import of such goods at zero customs duty;
- f) Supply of goods to the power projects and refineries not covered in (e) above;
- g) Supply to projects funded by United Nations Agencies;
- h) Supply of goods to nuclear power projects through competitive bidding as opposed to International Competitive Bidding;
- i) Supply made to bonded warehouses set up under the Foreign Trade Policy or under section 65 of the Customs Act and free trade and warehousing zones, where payment is received in foreign exchange;
- j) Supply against special entitlements of duty free import of goods under the Foreign Trade Policy;
- k) Export of services by services units including services rendered within Special Economic Zone or services rendered in the Domestic Tariff Area and paid for in free foreign exchange or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India;
- l) Supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Color Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;
- m) Supply to other units and Developers in the same or other Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit provided that such goods and services are permissible for import or procurement by such units and Developers;
- n) Supply of goods to Domestic Tariff Area against payment in foreign exchange from the Exchange Earners Foreign Currency account of the Domestic Tariff Area buyer or Free Foreign Exchange received from overseas;
- o) Supply of goods against free foreign exchange by a Free Trade and Warehousing Zone Unit;

B: consist of sum of the following:-

- a) Sum total of the Cost Insurance and Freight value of all imported inputs used for authorized operations during the relevant period and the Cost Insurance and Freight value of all imported capital goods including goods purchased on high seas basis even though paid for in Indian Rupees and the value of all payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings during the first five year period or any other charges;
- b) Value of goods obtained from other Unit or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit or from bonded warehouses or procured from international exhibitions held in India or precious metals procured from nominated agencies;
- c) The Cost Insurance Freight value of the goods and services, including prorata Cost Insurance Freight of capital goods, imported duty free or leased from a leasing company or

received free of cost and or on loan basis or on transfer for the period they remain with Unit;

- d) For annual calculation of Net Foreign Exchange, value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortized at the rate of ten per cent every year from the first year to tenth year.

9.11 Sub- contracting

A Unit may with prior permission of the Specified Officer (to be given on an annual basis) subcontract a part of its production or any production process, to

- a unit(s) in the Domestic Tariff Area or
- in a Special Economic Zone or
- export Oriented Unit or
- a unit in Electronic Hardware Technology Park or
- software Technology Park unit or
- bio-technology Park unit

Main Conditions for sub-contracting –Rule 41

- a) The finished goods requiring further processing or semi-finished goods including studded jewellery, taken outside the Special Economic Zone for sub-contracting shall be brought back into Unit within 120 days or extended time
- b) Wastage shall be permitted as per the wastage norms admissible under the Foreign Trade Policy read with the Handbook of Procedures
- c) 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

Sub contracting abroad- Rule 41(2)

The Development Commissioner may also permit subcontracting of part of the production process abroad and in such cases, the goods may be exported from the sub-contractor's premises abroad subject to following conditions, namely:-

- a) sub-contracting charges shall be declared in the export declaration forms and invoices and other related documents;
- b) the export proceeds shall be fully repatriated in favour of the Unit.

Sub-Contracting within same Economic Zone – Rule 42(4)

A Unit may sub-contract a part of production or production process in another Unit within the same Special Economic Zone subject to the following conditions, namely:-

- i) the movement of goods shall be under serially numbered challans and record of such movement of goods shall be maintained by the Unit;
- ii) raw material imported or procured by the Unit for manufacture of capital goods may be transferred to another unit for the purpose of manufacture or fabrication of capital goods for use by the Unit which had imported or procured the raw materials.

Sub-contracting for Domestic Tariff Area unit for export- Rule 43

A Unit may, on the basis of annual permission from the Specified Officer, undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter, subject to following conditions, namely:-

- (a) all the raw material including semi-finished goods and consumables including fuel shall be supplied by Domestic Tariff Area exporter;
- (b) finished goods shall be exported directly by the Unit on behalf of the Domestic Tariff Area exporter:

Provided that in case of subcontracting on behalf of an Export Oriented Unit or an Electronic Hardware Technology Park unit or an Software Technology Park unit or Bio Technology Park unit, the finished goods may be exported either from the Unit or from the Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-Technology Park unit;
- (c) export document shall be jointly in the name of Domestic Tariff Area exporter and the Unit;
- (d) the Domestic Tariff Area exporter shall be eligible for refund of duty paid on the inputs by way of brand rate of duty drawback.

9.12 Domestic Tariff Area

“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 – Section 2(i)

Sales in DTA-Rule 47

A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or byproducts arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30, subject to the following conditions, namely:-

- (a) domestic Tariff Area sale of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India
- (b) domestic Tariff Area sale of rejects or scrap or waste or remnants arising during the manufacturing process or in connection there-with by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items

Procedure for sale in DTA-Rule 48

- 1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers. Bill of Entry for home consumption may also be filed by a Unit on the basis of uthorization from a Domestic Tariff Area buyer.
- 2) Valuation of the goods and/or services shall be determined in accordance with provisions of Customs Act and rules.
- 3) Where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.
- 4) Where the import duty on such goods is ‘Nil’ and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back

such goods to Domestic Tariff Area on the basis of invoice only Filing of Bill of Entry in such cases shall not be required.

Domestic Tariff Area removals - abatement of duties in certain cases- Rule 49

A Unit may remove capital goods to Domestic Tariff Area after use in Special Economic Zone on payment of duty as under:-

- (a) duty shall be levied on such goods on the depreciated value thereof and at the rate in force on the date of removal of the goods;
- (b) depreciation in value shall be allowed for the period from the date of commencement of production or where such capital goods have been received in the Unit after such commencement of production from the date such goods have been put to use for production till the date of presentation of Bill of Entry for home consumption;

Item	For every quarter in	Straight Line depreciation rate
Computer and Computer peripherals	First Year	10%
	Second Year	8%
	Third Year	5%
	Fourth Year	1%
	Fifth Year	1%
Capital goods other than Computer and Computer peripherals	First Year	4%
	Second Year	3%
	Third Year	3%
	Fourth Year	2.5%
	Fifth Year	2.5%

A Unit may remove following goods from the Special Economic Zone to Domestic Tariff Area without payment of duty: -

- (a) goods imported and admitted into the Special Economic Zone after payment of applicable duty and such goods are cleared into Domestic Tariff Area, without any processing,
- (b) used packing materials except metal containers;
- (c) computer and computer peripherals, donated with the approval of the Specified Officer to the recognized non-commercial educational institutions or registered charitable hospitals or public libraries or public funded research and development establishments or organizations of Government of India or Government of a State or Union Territory, after two years of admission of goods and use by a Unit,

Temporary Removals to Domestic Tariff Area

- 1) The Unit may temporarily remove following goods to Domestic Tariff Area without payment of duty, namely: -
 - a) capital goods and parts thereof for repairs and return thereof;
 - b) goods for display, export promotion, exhibition and return thereof;
 - c) goods for job work, test, repair, refining and calibration and return thereof;
 - d) laptop or notebook computers or video projection systems for use by authorized employees of a Unit or developer;
 - e) any other goods with the prior approval of the Authorized Officer.
- 2) A Unit may transfer goods to Domestic Tariff Area or abroad for repair or replacement or testing or calibration, quality testing and research and development purposes under intimation to the Specified Officer and on maintenance of records for movement of such goods.
- 3) A Unit may transfer goods for quality testing or research and development purposes, to any recognized laboratory or institution, without payment of duty, on giving an undertaking to the authorized officer for the return of such goods

If such goods have been consumed or destroyed in the process of testing or at the time of research and development, a certificate from the laboratory or institution to that effect shall be furnished to the Specified Officer by the Unit.

Chapter 10

Imports of Goods and Services

10.1 Definition

Sec 2(o) of the Special Economic Zones Act, 2005 defines "Import" as-

- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) receiving goods, or services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

10.2 Import and Procurement

A Unit or Developer may import or procure from the DTA without payment of duty, taxes or cess or procure from DTA after availing export entitlements or procure from other Units in the same or other SEZ or from EOU or STP unit or EHTP unit or Biotechnology Park unit, all type of goods except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items.

10.3 Import of Capital Goods Rule 27 (4)

A Unit or Developer may also source capital goods, without payment of duty, taxes or cess from a domestic or foreign leasing company, under a valid lease agreement. The Unit or Developer and the domestic or foreign leasing company shall jointly file documents for import or domestic procurement

10.4 Import for creating Central Facility for use by Units in SEZ-Rule 27(5)

A Unit may import or procure from Domestic Tariff Area, all types of goods and services, without payment of duty, taxes or cess for creating a central facility for use by Units in Special Economic Zone and where such facility is created for software development, the same may also be accessed by software exporters of Domestic Tariff Area.

10.5 Goods imported before issue of Letter of approval- Rule 27(7)

The goods already imported or shipped or arrived before the issue of Letter of Approval shall be eligible for duty free clearance provided Customs duty has not been paid and Goods have not been cleared from customs or cleared and placed in the Bonded Warehouses.

10.6 Defective Goods -Rule 27(9)

- (a) where goods or parts thereof, imported or procured from Domestic Tariff Area are found to be defective may be sent outside the Special Economic Zone without payment of duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed
- (b) where overseas supplier or the Domestic Tariff Area supplier of goods does not insist for re-export or for supply back to the Domestic Tariff Area of goods, the same shall not be

insisted upon and such goods shall be destroyed with the permission of the Specified Officer

- (c) destruction shall not be permitted in case of precious and semi-precious stones and precious metals
- (d) in case of return of goods procured from the Domestic Tariff Area, the same shall be allowed on refund of the export entitlement which have been received or availed or claimed by the Domestic Tariff Area supplier or the Unit or the Developer, as the case may be.

10.7 Assessment on self-certification -Rule 27(10)

- a) the Assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration and shall not be subjected to routine examination except in case of procurement from the Domestic Tariff Area under the claim of export entitlements
- b) where based on a prior intelligence the examination becomes necessary the same shall be carried out by the Authorized Officer(s) after obtaining written permission from the Development Commissioner or the Specified Officer.

10.8 Examination of goods - Rule 27(11)

- a) the goods imported by the Unit or Developer shall be allowed to be transferred from the port or airport to the Special Economic Zone without examination by the Customs Authorities at the port or airport
- b) goods may be examined with the prior permission of the Assistant or Deputy Commissioner of Customs in writing in case there is specific adverse information or intelligence

10.9 Procedure for import –Rule 28

- 1) A Unit or Developer may import goods directly into the Special Economic Zone or through any other:
 - ❖ ports or airports;
 - ❖ land customs stations;
 - ❖ inland container depots;
 - ❖ foreign post offices;
 - ❖ authorized couriers; or
 - ❖ through personal baggage of passengers authorized by the Special Economic Zone Unit; or
 - ❖ via Satellite data communication such as internet or any other telecommunication link.
- 2) Goods imported through ports or airports, land customs stations, or inland container depots shall be allowed to be transferred
 - ❖ in full cargo load or
 - ❖ less than container load cargo
 - ❖ by direct transfer from such port or airport or Inland container Depot or land customs station to the Special Economic Zone
- 3) The import of Information Technology enabled services, including software, shall also be allowed through data communication link, internet, e-mail or any other electronic mode.

10.10 Procedure for direct Clearance from Port or Airport Rule–29

1. The Special Economic Zone Importer shall file Bill of Entry for home consumption in quintuplicate giving therein, description with specially stamped endorsement as “Special Economic Zone Cargo” along with Bill of Lading or Airway Bill and invoice and packing list with the Authorized Officer
2. The registered or assessed Bill of Entry shall be submitted to the Customs Officer at the place of import and the same shall be treated as permission for transfer of goods to the Special Economic Zone Importer;
3. In case of sealed full container load, the goods shall be transferred to Special Economic Zone on the basis of registered or assessed Bill of Entry after verification of the seal, without customs escort
4. In case of other cargo, goods shall be allowed to be transferred to Special Economic Zone on the basis of registered or assessed Bill of Entry either under customs escort or under transshipment procedure
5. On arrival of goods as full container load cargo or sealed truck, seal on the container or the truck, as the case may be, shall be verified by the authorized officer, at the Special Economic Zone gate of entry;
6. On arrival of goods in less than container load cargo, verification of marks and numbers shall be carried out at random by the authorized officer at the Special Economic Zone gate of entry
7. The Special Economic Zone importer shall submit fifth copy of Bill of Entry bearing endorsement of the authorized officer *that the goods have been received in Special Economic Zone*, to the Customs Officer in charge of the airport or port or inland container depot or land customs station or post office or public or private bonded warehouses within 45 days
8. Endorsement regarding verification of marks and numbers in case of less than container load cargo or inspection of seal in the case of full container load cargo or sealed truck by the authorized officer and the receipt of the goods by the Special Economic Zone importer shall be deemed to be the completion of the customs procedure for out of charge of the goods.

10.11 Procedure for Goods imported through courier- Rule 29(2) (i)

- a) The authorized officer shall assess the goods;
- b) The courier shall deliver the goods under customs escort or to the custodian for delivery of goods to Special Economic Zone Importer
- c) In case the Special Economic Zone is located away from the station where the goods have been imported by the courier, the goods shall be transhipped to Special Economic Zone Importer under transshipment procedure

10.12 Procedure for Import by Post Rule 29(4)

Where goods are imported by post, the Special Economic Zone Importer shall follow the procedure specified Rule 29(2) and shall file the Bill of Entry with the authorized officer with clear marking as “Postal Imports” and subject to following conditions, namely:-

- i) the post-office registration number as indicated in the intimation letter issued by the post office shall be taken as the import general manifest and item number of the Bill of Entry;
- ii) the copy of intimation letter received from the post office shall be pasted on the reverse side of the original Bill of Entry;

- iii) where Special Economic Zone is situated away from the foreign post office, goods shall be moved to Special Economic Zone under customs escort or shall be handed over to the custodian of Special Economic Zone or delivered to the Unit or its authorized representative after sealing of the parcel.

10.13 Import through Personal baggage-Rule 29(5)

The units may import goods as personal baggage through an authorized passenger subject to the following procedure, namely:-

- i) the authorized passenger bringing the precious goods shall declare the goods with the customs authorities at the airport in the arrival hall in the declaration form along with a duly acknowledged copy of intimation submitted to the authorized officer;
- ii) the authorized passenger shall hand over the goods duly packed indicating name and address of the consignee Unit and accompanied by invoice and packing list to the customs authorities at the airport for detention in the warehouse under a detention receipt;
- iii) the customs officer of the airport shall detain the goods and issue detention receipt;
- iv) the Unit shall file Bill of Entry in quintuplicate along with a copy of invoice, packing list and declaration with the authorized officer and the detention receipt number issued by the customs officer at the airport shall be treated as Import General Manifest and item number;
- v) after assessment of Bill of Entry, original Bill of Entry shall be retained by the authorized officer and the remaining copies shall be handed over to the authorized representative of the Unit for presenting at the airport detention counter;
- vi) after release, the goods shall either be moved to the Unit under the Customs escort or shall be delivered to the Custodian or authorized representative of the Unit after sealing.

10.14 Procedure for Import through data communication or telecommunication links-Rule 29(6)

For import of computer software or services, Unit shall file consolidated bill of entry, invoice and other relevant documents within 3 working days of the closure of the month and shall obtain notional out of charge from the authorised officer subject to

- i) import documents shall be routed through banks or advance payments for imports could be outed through foreign currency Account;
- ii) instructions issued by RBI should be complied with.

10.15 Import of Defective Goods- Rule 29(7)

A Unit may import the goods exported by it which are either found to be defective or damaged by the overseas buyer or have not been taken delivery of by the overseas buyer, by following the procedure under 29 (2) and subject to the following conditions:

- i) the identity of the goods is established at the time of re-import; and
- ii) the goods are re-imported within the warranty period or the validity of the maintenance contract or a period of one year from the date of export, whichever is later.

10.16 Procedure for procurements from the Domestic Tariff Area- Rule 30

- i) The Domestic Tariff Area supplier supplying goods to a Unit or Developer shall clear the goods either under bond or as duty paid goods under claim of rebate on the cover of ARE-I

- ii) Goods procured by a Unit or Developer, on which Central Excise Duty exemption has been availed but without any availing of export entitlements, shall be allowed admission into
- iii) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of

ARE-1

- i) A copy of the ARE-1 and/or copy of Bill of Export as the case may be, with an endorsement by the authorized officer that goods have been admitted in full into the Special Economic Zone shall be forwarded to the Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within 45 days.
- ii) Where a Bill of Export has been filed under a claim of drawback or Duty Entitlement Pass Book, the Unit or Developer shall claim the same from the Specified Officer.
- iii) On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer shall examine the goods in respect of description, quantity, marks and other relevant particulars given in the ARE-1, invoice, Bill of Export and packing list.
- iv) Drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier shall be admissible provided payments for the supply are made from the Foreign Currency Account of the Unit.
- v) A copy of the Bill of Export and ARE-1 with an endorsement of the Authorized officer that the goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.
- vi) The Unit or Developer may also procure goods from Domestic Tariff Area without availing exemptions, drawbacks and concessions on the basis of invoice or transport documents, issued by the supplier.

10.17 Procedure for procurement from warehouse—Rule 30(12)

- i) Where goods are to be procured from warehouse, a Unit or Developer shall file a Bill of Entry with the specified Officer
- ii) The Unit or Developer shall submit Bill of Entry assessed by the Authorized Officer to the Customs Officer in charge of the warehouse from where the Special Economic Zone Unit or Developer intends to procure the goods;
- iii) The Customs Officer in charge of the warehouse shall allow clearance of the goods from the warehouse for supply to the Unit or Developer without payment of duty on the cover of ex-bond Shipping Bill and on the basis of Bill of Entry duly assessed by the Authorized Officer;
- iv) Where the re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill is not received by the Customs Officer in charge of warehouse within 45 days

10.18 Procuring Goods from same or other SEZ –Rule 30(15)

- i) The receiving Unit or Developer shall file Bill of Entry for home consumption with the Authorized Officer, in quintuplicate, giving description of the goods along with an invoice and packing list for assessment;
- ii) On the basis of such assessed Bill of Entry, the goods shall be allowed to be transferred to the receiving Unit or Developer under transshipment permit;
- iii) There shall be no requirement to file any additional documents or bond(s) for the purpose of transshipment of goods and the transshipment permission shall be stamped on the Bill of Entry itself;

- iv) The supplying Unit shall submit the re-warehousing certificate to the Specified Officer having jurisdiction over the supplying unit within 45 days;
- v) Where the supplying and receiving Units or Developer are located in the same Special Economic Zone, the provisions of sub rules (i) to (iv) shall not apply and the movement of goods shall be allowed and such transactions shall be recorded in the regular books of accounts of the receiving Unit or Developer and the supplying Unit and no Bill of Entry shall be required to be filed.

10.19 Admission of the Goods-Rule 33

Any goods imported or procured from Domestic Tariff Area, required for authorized operations, shall be admitted into the Special Economic Zone subject to the following conditions, namely:-

- i) the goods imported or procured from Domestic Tariff Area shall be brought into the premises of Unit;
- ii) the goods, which require frequent entry into and exit from the Zone and which are not required for carrying out authorized operations shall be allowed into or out of the Special Economic Zone on the basis of general permission of the Specified Officer;
- iii) hazardous goods may be admitted into specially designated area or installation of Special Economic Zone subject to such safeguards as may be specified by Specified Officer.

10.20 Utilization of Goods –Rule 34

The goods admitted into a Special Economic Zone 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 Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronics Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable.

10.21 Duration of goods and Service in SEZ- Rule 37

The goods admitted to a Special Economic Zone shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be **allowed by the Specific Officer**

10.22 Destruction of Goods –Rule 39

- i) After advance intimation to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured or produced by the Unit including rejects or waste or scrap or remnants within the Special Economic Zone
- ii) Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer

- iii) The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in of case destruction of goods procured from Domestic Tariff Area.

Chapter 11

Export of Goods and Services

11.1 Definition

Sec 2 (m) of the Special Economic Zones Act, 2005 defines “ export” as :

- i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

11.2 General Conditions of Export - Rule 45

A Unit may export goods or services as per the terms and conditions of Letter of Approval 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.

11.3 Procedure for export- Rule 46

The procedure for export from Special Economic Zone through seaports or airports or Inland Container Depot or Container Freight Station or Land Customs Station or by Post or by Courier or by Personal Carriage, as the case may be, shall be as under:

- i) the Unit shall file Shipping Bill, in quadruplicate, with the Authorized Officer of Customs in the Special Economic Zone together with relevant documents, namely, invoice, packing list and Currency Declaration Form (GR);
- ii) the Shipping Bill shall be registered, assigned a running serial number and assessed by the Authorized Officer;
- iii) the goods shall not be subjected to routine examination and ‘Let Export Order’ shall be given on the basis of self certification by the Unit;
- iv) the goods may be examined at the port, airport Inland Container Depot or Container Freight Station or Land Customs Station only in case of specific intelligence or information;
- v) the Unit may export through Inland Container Depot located in the Special Economic Zone, or through any port or airport or Inland Container Depot.

11.4 Export of software- Rule 46(3)

- i) A Unit may export software or processed data, including call center services via data link or internet or e-mail or through other electronic mode and the Software Export Declaration Form for such exports duly certified by Development Commissioner;

- ii) A Unit may provide consultancy services “on site” abroad subject to submission of details of the contract or purchase order and foreign exchange remitted and the persons deputed abroad to the Authorised Officer.

11.5 Export through couriers Rule–46 (5)

- i) Export through couriers shall be allowed only if the courier is an authorised courier, being registered with the Commissioner of Customs having jurisdiction over the gateway airport and the procedure specified in the Courier Export and Import (Clearance) Regulations, 1998 shall be followed
- ii) Goods shall be allowed to be handed over to the courier by the custodian as per the procedure specified by the Specified Officer.

11.6 Export as Personal baggage- Rule–46(6) Unit may export goods to be carried by foreign bound passengers authorized by the Unit in this behalf as personal baggage, subject to the following conditions, namely:-

- i) the Unit shall submit the shipping bill, invoice and Currency Declaration Form (GR) with the authorised officer;
- ii) the Shipping Bill shall be assessed by the Authorised Officer in the same manner as is done in the case of exports under free shipping bill;
- iii) the goods shall be transferred from the Special Economic Zone to the airport under the cover of assessed shipping bill by the authorized agency approved by the Specified Officer or under escort of Authorized Officer;
- iv) the goods shall be deposited with the warehouse at the airport against a “detention receipt” issued by the Customs authorities at the airport;
- v) the consignment shall be handed over to the authorized passenger at the time of departure on submission of original detention receipt;
- vi) the Unit shall submit to the Specified Officer, the proof of export issued by the Customs authority at the airport within 15 days from the date of removal of the goods from the Special Economic Zone;
- vii) where the facility of custodian is available in the Special Economic Zone and the Airport, goods shall be transferred and delivered to the authorized passenger at the airport by the custodian.
- viii) personal carriage of spare parts by foreign bound passenger shall be allowed in case the spare parts are required for repairs of exported goods at customer site and following documents shall be submitted as proof of export, namely:-
 - ❖ permission letter from the authorised officer for exports; and
 - ❖ invoice with value.
- ix) personal Carriage of any goods for exports by authorized passenger on Document Against Acceptance or Cash On Delivery basis may be allowed provided the Unit submits following documents, namely:-
 - ❖ copy of Shipping Bill; and
 - ❖ the bank Certificate for realization of proceeds shall be submitted within 30 days of delivery of the goods.

11.7 Export of goods for participation in exhibitions - Rule 46(9)

- i) The unit shall give advance intimation to the development commissioner to participate in the exhibition abroad or for taking goods abroad for display and sale;

- ii) Shipping bill along with relevant documents shall be filed with the authorized officer;
- iii) Photographs of the items being taken out for exhibition, attested by the unit, shall be furnished in case of gems and jewellery;
- iii) Goods unsold in the exhibition or display tour shall be imported within 45 days from the completion of the exhibition;
- iv) The unit shall file bill of entry for import of unsold goods;
- v) The goods so imported shall be allowed admission into the unit free of duty;
- vi) The unit shall submit proof of inward remittance in respect of goods sold in the exhibition.

11.8 Export through another Unit/Merchant Exporter/EOU/EHTP/STP

- i) Goods or services shall be manufactured or developed in the Unit concerned;
- ii) Requirements of positive Net Foreign Exchange Earning or any other conditions relating to authorized operations shall continue to be discharged by the Unit;
- iii) Export orders so procured shall be executed within the provisions of these rules and the goods shall be directly transferred from the Unit to the airport or port of shipment;
- iv) Fulfillment of positive Net Foreign Exchange Earning by the Unit shall be reckoned on the basis of the price at which the goods or services were supplied by the Unit to the status holder or merchant exporter or other Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit.

11.9 Export through Merchant Exporter

- i) Goods shall be exported directly from the Special Economic Zone or through any other port where the merchant exporter files his shipping bill, in which case the goods shall move directly from the Special economic Zone to the said port of export on the basis of pink shipping bill as if these were movement of goods from one Warehouse to another;
- ii) Export document shall contain the name of the merchant exporter or the status holder and the Unit;
- iii) Merchant exporter or status holder, shall export goods under a free Shipping Bill.

Chapter 12

Special Provisions relating to Gems and Jewellery Unit

12.1 Value of Bond-Cum Legal Undertaking –Rule 22(1)(f)

The value of the Bond-cum-Legal Undertaking in respect of gems and jewellery units shall be calculated on rates as notified by the Central Government, from time to time

12.2 Import -Rule 27(6)

A gem and jewellery Unit may also source on outright purchase basis or loan basis, gold or silver or platinum through the Nominated Agencies and where such sourcing is on loan basis, the same shall be subjected to the conditions applicable to such transactions under the provisions of the Foreign Trade Policy in force:

The conditions applicable to loan transaction shall not apply where the Unit converts such loan into outright purchase by paying the outstanding loan amount and interest within the period for export prescribed under the Foreign Trade Policy applicable to the loan transaction.

12.3 Import of rough diamonds- Rule 27(8)

No import or export of rough diamonds shall be permitted unless the shipment parcel is accompanied by Kimberley Process Certificate issued by the Development Commissioner.

12.4 Procedure for delivery through the Port, Inland Container Depot - Rule 29(3)

The procedure for delivery through the Port, Inland Container Depot, Custodian's designated customs area, in case of high value parcels imported by gem and jewellery Units, located in Special Economic Zone shall be as under: -

- i) where goods are consigned to an Inland Container Depot located in a Special Economic Zone, transfer of goods shall be by the carrier appointed for the purpose and the goods shall be delivered to the Inland Container Depot in the Special Economic Zone by the container line or custodian.
- ii) after receipt of goods in the Special Economic Zone Inland Container Depot, delivery of goods shall be made by the custodian of the Inland Container Depot after verification of marks and number of packages of less than container load cargo and verification of seal of full container load cargo, in the premises of the custodian on the basis of assessed Bill of Entry.
- iii) filing of advance Bill of Entry may not be required before arrival of the goods in the Special Economic Zone and the Special Economic Zone Importer may, at his option, file the Bill of Entry before or after arrival of goods: Where verification cannot be undertaken in the premises of the custodian or if the Special Economic Zone importer so requests, goods shall be allowed to be taken to the premises of the Special Economic Zone Importer, by the Specified Officer and thereafter the goods may be verified there.

- (iv) there shall be no examination of the goods and the goods shall be deemed to be out of charge on the day of handing over of the goods to the Special Economic Zone Importer.

12.5 Procurement of cut and polished diamonds and precious and semi precious stones from Domestic Tariff Area.- Rule 30(16)

A gem and jewellery Unit may procure cut and polished diamonds and precious and semi precious stones from the Domestic Tariff Area, as per the following procedure, namely :-

- i) the parcel shall be brought into the Zone in a sealed condition by the authorized representative of the Domestic Tariff Area supplier or Customs House Agent, who shall present the invoice clearly marked original, duplicate and triplicate to the Authorized Officer at the gate;
- ii) the Authorized Officer shall register the invoice at the gate of the Special Economic Zone and endorsing the registration number on the original and duplicate copies of the Invoice and the parcel shall be allowed to be taken into the premises of the Unit and such goods shall be separately accounted for by the Unit;
- iii) the duplicate copy of the invoice with the endorsement of the Authorized officer shall be forwarded to the supplier in the Domestic Tariff Area for claiming Replenishment Licence from the Development Commissioner of the Special Economic Zone.

12.6 Destruction of Goods - Rule 39(2)

Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer:

Provided that destruction of precious and semi-precious stones and precious metals shall not be allowed.

12.7 Export of Samples–Rule 45(7)

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.

12.8 Procedure for export–Rule 46(2)

The procedure for export of gems and jewellery shall be as under:-

- i) the shipping bill and the invoice alongwith packing list presented to the authorized officer shall contain the following:
 - ❖ description of the items;
 - ❖ weight and purity of gold or silver or platinum and the type of gems stone, such as, diamond, ruby, sapphire, cubic zircon and the like which has been used for studding and its weight in carats; and
 - ❖ free on board price rate of the jewellery item and quantity in pieces and the total value;
- ii) the Unit may export jewellery on the basis of a notional rate certificate issued by the Nominated Agency and this rate will be based on the prevailing Gold or US Dollar rate and the US Dollar or Indian Rupees rate given in the notional rate certificate: The certificate issued by the Nominated Agency shall not precede the date of shipment by more than three working days or as may be notified by Central Government;
- iii) the Unit obtaining gold or silver or platinum from the Nominated Agency on loan basis shall export gold or silver or platinum jewellery within the period prescribed for the same under

the Foreign Trade Policy: The unit can convert such loan into outright purchase by paying the outstanding loan amount plus interest provided they exercise this option within the period prescribed under the Foreign Trade Policy.

- iv) in the case of export of jewellery on the basis of notional rate certificate issued by the Nominated Agency, the Unit may fix the price and repay the gold loan within the prescribed period for export as may be notified by the Central Government from time to time: The price shall be communicated to the Nominated Agency for issue of a certificate showing the final confirmation of the rate to the bank negotiating the document.

12.9 Export of Goods as Personal Baggage Rule 46(6)(x)

A Unit may export goods as personal carriage of gems and jewellery items of the value not exceeding US\$ 2 million or other goods not exceeding Rs 5 lakhs in value, for holding or participating in overseas exhibitions after permission from Development Commissioner subject to the following conditions, namely.-

- i) the Unit shall declare personal carriage of such goods to the Customs authorities at the airport while leaving the country and obtain necessary endorsement ; and
- ii) unit shall bring back goods or repatriate the sale proceeds within 45 days from the date of closure of exhibition through normal banking channels or within such days as may be notified by the Central Government;
- iii) for personal carriage of goods by foreign bound passenger, the following documents shall be submitted by a Unit as proof of exports, namely.-
 - ❖ copy of shipping bill filed by the Unit;
 - ❖ copy of the Currency Declaration Form filed by the Foreign buyer with the Customs at the time of his arrival;
 - ❖ foreign exchange realisation or encashment certificate from the Bank;

Chapter 13

Reports and Returns

13.1 Annual Performance Report of Unit – Rule 22(3)

The Unit shall submit Annual Performance Reports in the Form I, to the Development Commissioner and the Development Commissioner shall place the same before the Approval Committee for consideration

Form I contains information on Exports from Unit, Details of Raw material and inputs utilized, Details of Net Foreign Exchange Earnings, DTA Sales, Details of Investment and Capital Structure

This report is to be certified by Chartered Accountant

13.2 Guidelines for annual monitoring of performance of units- Rule 54 and Annexure I to Rules

- i) 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.
- ii) 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.
- iii) Units with negative Net Foreign Exchange in the 1st and 2nd year shall be placed under the Watch List to watch their performance.
- iv) Show Cause Notice: If a Unit continues to be Net Foreign Exchange negative by the end of 3rd year, a Show Cause Notice shall be issued. If the negative performance continues till the 5th year, Development Commissioner shall initiate penal action as provided under the rule-25.

Chapter 14

Winding up of Unit

The Unit may choose to step out of the Special Economic Zone with the approval of the Development Commissioner 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 and if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation), Act, 1992. (Rule 74(1))

The following conditions shall apply to the unit winding up: -

- i) 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
- ii) in case the Unit has failed to fulfill the terms and conditions of the Letter of Approval 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
- iii) the Unit shall continue to be treated a unit till the date of final exit.- **Rule 74(2)**

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. - **Rule 74(3)** Development Commissioner 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 shall be allowed in straight line method as specified below:-

- iv) for computer and computer peripherals for every quarter in the 1st, 2nd and 3rd year at the rate of 10%, 8% and 5% respectively and for every quarter in the 4th and 5th year at the rate of 1%.
- v) for capital goods other than computer and computer peripherals for every quarter in the 1st, 2nd, 3rd year at the rate of 4%, 3% and 3% respectively, for every quarter in the 4th and 5th year at the rate of 2.5% and thereafter for every quarter at the rate of 2%. For the purpose of computing depreciation for any part of a quarter, the rate applicable to such quarter in full shall be considered.

Chapter 15

Off-shore Banking Units

15.1 Introduction

The Union Commerce Minister in the EXIM Policy 2002-07 speech had announced that for the first time, Offshore Banking Units (OBUs) would be permitted to be set up in SEZs . Accordingly, Reserve Bank of India has formulated a scheme for the setting up of OBUs in SEZs by banks.

Sec 2(u) of the Special Economic Zones Act ,2005 defines “Offshore Banking Unit”as a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949;

15.2 Setting up and operation of an Offshore Banking Unit (Sec 17 of SEZ Act 2005)

- i) An application for setting up and operation of an Offshore Banking Unit in a Special Economic Zone may be made to the Reserve Bank in such form and manner as may be prescribed.
- ii) The application to RBI is to be made in Form VI prescribed under Banking Regulation (Companies) Rules, 1949.
- iii) On receipt of an application under sub-section (1), the Reserve Bank shall, if it is satisfied that the applicant fulfills all the conditions specified under sub-section (3), grant permission to such applicant for setting up and operation of an Off-shore Banking Unit.
- iv) The terms and conditions subject to which an Offshore Banking Unit may be set up and operated in a Special Economic Zone shall be as specified in the Notification number FEMA 71/2002-RB dated 7th September, 2002 by the Reserve Bank of India, as amended from time to time.
- v) Before granting any permission under this section, the Reserve Bank may require to be satisfied by an inspection or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business.
- vi) The Reserve Bank may grant permission subject to such conditions as it may think fit to impose either generally or with reference to any particular case.

15.3 Features of OBU

- i) OBU would be virtually foreign branches of Indian banks but located in India and would be exempt from CRR; SLR.
- ii) OBU would give access to SEZ units and SEZ developers to international finances at international rates.
- iii) An eligible bank can set up one OBU in one SEZ. The banks can therefore set up more than one OBU, but not in the same SEZ.
- iv) OBUs are prohibited from undertaking cash transactions

- v) All prudential norms applicable to overseas branches of Indian banks would apply to the OBUs
- vi) OBUs will be regulated and supervised by RBI through its Exchange Control Department, Department of Banking Operations and Development and Department of Banking Supervision.
- vii) The OBUs would operate and maintain balance sheet only in foreign currency and would not be allowed to deal in Indian Rupees
- viii) Deposits of OBUs will not be covered by deposit insurance
- ix) Profits of OBU are not taxable for the first five years of operations
- x) The OBUs would be required to scrupulously follow "Know Your Customer (KYC)" and other anti-money laundering instructions issued by RBI from time to time
- xi) The sources for raising foreign currency funds would be only external.
- xii) Funds can also be raised from those resident sources to the extent such residents are permitted under the existing exchange control regulations to invest/maintain foreign currency accounts abroad
- xiii) Overseas Corporate Bodies have been excluded as eligible class of investors. As such OBU cannot raise funds from OCBs.
- xiv) Deployment of funds would be restricted to lending to units located in the SEZ and to SEZ developers.
- xv) Foreign currency requirements of corporates in the domestic area can be met by the OBUs.
- xvi) No separate assigned capital for such branches would be required. However, with a view to enabling them to start their operations, the parent bank would be required to provide a minimum of US\$ 10 million to its OBU.
- xvii) OBUs in India include: OBUs of PNB, SBI, ICICI Bank, BOB and Union Bank of India in SEEPZ SEZ and OBU of Canara Bank in NOIDA
- xviii) Investment of surplus funds outside India allowed as per investment policy framed by the Board of Directors of the bank
- xix) OBUs can lend to units and SEZ developers in other SEZs
- xx) OBUs can lend to an entity in DTA
- xxi) OBUs can lend to a corporate under the scheme of External Commercial Borrowings, subject to FEMA regulations
- xxii) Exposures should not exceed 25% of its total liabilities as at the close of business of the previous working day, at any point of time
- xxiii) Earlier it was allowed to lend to its parent bank subject to the ceiling fixed for banks for overseas borrowings but this is no more allowed.

15.4 Income tax provisions relating to OBU

- i) Section 10(15) (viii)- Income not included in total Income
- ii) Sec 10 AA- Tax holiday for newly established Units in SEZs [New Section 10AA]
- iii) Sec 80 LA -Deduction in respect of certain incomes of Offshore Banking Units and International Financial Services Centre

Chapter 16

International Financial Service Centre/ Offshore Financial Centre

16.1 Introduction

The dictionary meaning of the word offshore is "away from the shore"

The term offshore financial centre is usually meant to refer to low-tax, lightly regulated jurisdictions which specialise in providing the corporate and commercial infrastructure to facilitate the use of those jurisdictions for the formation of offshore companies. Up until the 1980s, Offshore Financial Centres were commonly referred to as "tax havens", although that phrase is not frequently used today.

The **IMF** considers the following to be **characteristics** of an Offshore Financial Centre:

- Jurisdictions that have relatively large numbers of financial institutions engaged primarily in business with non-residents;
- Financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies; and
- Centres which provide some or all of the following services: low or zero taxation; moderate or light financial regulation; banking secrecy and anonymity.

16.2 Offshore Finance and Offshore Financial Centers

Offshore finance is the provision of financial services by banks and other agents to non-residents. These services include the borrowing of money from non-residents and lending to non-residents. This can take the form of lending to corporates and other financial institutions, funded by liabilities to offices of the lending bank elsewhere, or to market participants. It can also take the form of the taking of deposits from individuals, and investing the proceeds in financial markets elsewhere.

At its broadest, an offshore financial centre can be defined as any financial centre where offshore activity takes place. This definition would include all the major financial centers in the world. In such centers, there may be little distinction between on- and offshore business, that is a loan to a non-resident may be funded in the center's own market, where the suppliers of funds can be resident or non-resident. Similarly, a fund manager may well not distinguish between funds of resident customers and those of non-residents.

Such centers, e.g., London, New York, and Tokyo could more usefully be described as "International Financial Centers" (IFCs). In some cases, e.g., New York and Tokyo, some of this activity, is carried on in institutions which are favorably treated for tax and other purposes, e.g., the U.S. International Banking Facilities (IBFs) and the Japanese Offshore Market (JOM).

A more practical definition of an OFC is a center where the bulk of financial sector activity is offshore on both sides of the balance sheet, (that is the counterparties of the majority of financial institutions liabilities and assets are non-residents), where the transactions are initiated elsewhere, and where the majority of the institutions involved are controlled by non-residents.

However, the distinction is by no means clear cut. OFCs range from centers such as Hong Kong and Singapore, with well-developed financial markets and infrastructure, and where a considerable amount of value is added to transactions undertaken for non-residents, to centers with smaller populations, such as some of the Caribbean centers, where value added is limited to the provision of professional infrastructure. In some very small centers, where the financial institutions have little or no physical presence, the value added may be limited to the booking of the transaction.

But in all centers specific transactions may be more or less of an "offshore" type. That is in all jurisdictions it is possible to find transactions where only the "booking" has taken place in the OFC, while at the same time business involving much more value added may also take place.

In addition to banking activities, other services provided by offshore centers include fund management, insurance, trust business, tax planning, and IBC activity

16.3 Examples of Uses of Offshore Financial Centers (OFCs)

Offshore banking licenses.

A multinational corporation sets up an offshore bank to handle its foreign exchange operations or to facilitate financing of an international joint venture. An onshore bank establishes a wholly owned subsidiary in an OFC to provide offshore fund administration services (e.g., fully integrated global custody, fund accounting, fund administration, and transfer agent services). The owner of a regulated onshore bank establishes a sister "parallel" bank in an OFC. The attractions of the OFC may include no capital tax, no withholding tax on dividends or interest, no tax on transfers, no corporation tax, no capital gains tax, no exchange controls, light regulation and supervision, less stringent reporting requirements, and less stringent trading restrictions.

Offshore corporations or international business corporations (IBCs)

IBC's are limited liability vehicles registered in an OFC. They may be used to own and operate businesses, issue shares, bonds, or raise capital in other ways. They can be used to create complex financial structures. IBC's may be set up with one director only. In some cases, residents of the OFC host country may act as nominee directors to conceal the identity of the true company directors. In some OFC's, bearer share certificates may be used. In other OFC's, registered share certificates are used, but no public registry of shareholders is maintained. In many OFC's, the costs of setting up IBC's are minimal and they are generally exempt from all taxes. IBC's are a popular vehicle for managing investment funds.

Insurance companies

A commercial corporation establishes a captive insurance company in an OFC to manage risk and minimize taxes. An onshore insurance company establishes a subsidiary in an OFC to reinsure certain risks underwritten by the parent and reduce overall reserve and capital requirements. An onshore reinsurance company incorporates a subsidiary in an OFC to reinsure catastrophic risks. The attractions of an OFC in these circumstances include favorable income/withholding/capital tax regime and low or weakly enforced actuarial reserve requirements and capital standards.

Special purpose vehicles

One of the most rapidly growing uses of OFC's is the use of special purpose vehicles (SPV) to engage in financial activities in a more favorable tax environment. An onshore corporation establishes an IBC in an offshore center to engage in a specific activity. The issuance of asset-backed securities is the

most frequently cited activity of SPVs. The onshore corporation may assign a set of assets to the offshore SPV (e.g., a portfolio of mortgages, loans credit card receivables). The SPV then offers a variety of securities to investors based on the underlying assets. The SPV, and hence the onshore parent, benefit from the favorable tax treatment in the OFC. Financial institutions also make use of SPVs to take advantage of less restrictive regulations on their activities. Banks, in particular, use them to raise Tier I capital in the lower tax environments of OFCs. SPVs are also set up by non-bank financial institutions to take advantage of more liberal netting rules than faced in home countries, reducing their capital requirements.

Tax planning

Wealthy individuals make use of favorable tax environments in, and tax treaties with, OFCs, often involving offshore companies, trusts, and foundations. There is also a range of schemes that, while legally defensible, rely on complexity and ambiguity, often involving types of trusts not available in the client's country of residence. Multinational companies route activities through low tax OFCs to minimize their total tax bill through transfer pricing, i.e., goods may be made onshore but invoices are issued offshore by an IBC owned by the multinational, moving onshore profits to low tax regimes.

Tax evasion and money laundering

There are also individuals and enterprises that rely on banking secrecy to avoid declaring assets and income to the relevant tax authorities. Those moving money gained from illegal transaction also seek maximum secrecy from tax and criminal investigation.

Asset management and protection.

Wealthy individuals and enterprises in countries with weak economies and fragile banking systems may want to keep assets overseas to protect them against the collapse of their domestic currencies and domestic banks, and outside the reach of existing or potential exchange controls. If these individuals also seek confidentiality, then an account in an OFC is often the vehicle of choice. In some cases, fear of wholesale seizures of legitimately acquired assets is also a motive for going offshore. In this case, confidentiality is very important. Also, many individuals facing unlimited liability in their home jurisdictions seek to restructure ownership of their assets through offshore trusts to protect those assets from onshore lawsuits. Some offshore jurisdictions have legislation in place that protects those who transfer property to a personal trust from forced inheritance provisions in the home countries.

16.4 Setting up of International Financial Services Centre- Indian Scenario

"International Financial Services Centre" has been defined under Sec 2(q) of SEZ Act 2005 as an International Financial Services Centre which has been approved by the Central Government under sub-section (1) of section 18 of SEZ Act, 2005

- The Central Government may approve the setting up of an International Financial Services Centre in a Special Economic Zone and may prescribe the requirements for setting up and operation of such Center:
- The Central Government shall approve only one International Financial Services Centre in a Special Economic Zone.
- The Central Government may, subject to such guidelines as may be framed by the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and such other concerned authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of Units in an International Financial Services Centre.

- Till date no terms and conditions has been prescribed by Central Government for setting up of International Financial service centre

16.5 Tax Benefits

- Sec 10 AA- Tax holiday for newly established Units in SEZs
- Sec 80 LA- Deduction in respect of certain incomes of Offshore Banking Units and unit of International Financial Services Centre

16.6 IMF REPORT ON OFC

There is a great variety in the reputation of OFCs—ranging from those with regulatory standards and infrastructure similar to those of the major international financial centers, such as Hong Kong and Singapore, to those where supervision is non-existent. In addition, many OFCs have been working to raise standards in order to improve their market standing, while others have not seen the need to make comparable efforts. There are some recent entrants to the OFC market who have deliberately sought to fill the gap at the bottom end left by those that have sought to raise standards. Although there can be no hard and fast dividing line and the definition of an OFC depends on the use to which it is to be put, the following taxonomy can be proposed:

- International Financial Centers (IFCs)—such as London, New York, and Tokyo—are large international full-service centers with advanced settlement and payments systems, supporting large domestic economies, with deep and liquid markets where both the sources and uses of funds are diverse, and where legal and regulatory frameworks are adequate to safeguard the integrity of principal-agent relationships and supervisory functions. IFCs generally borrow short-term from non-residents and lend long-term to non-residents. In terms of assets, London is the largest and most established such center, followed by New York, the difference being that the proportion of international to domestic business is much greater in the former.
- Regional Financial Centers (RFCs) differ from the first category, in that they have developed financial markets and infrastructure and intermediate funds in and out of their region, but have relatively small domestic economies. Regional centers include Hong Kong, Singapore (where most offshore business is handled through separate Asian Currency Units), and Luxembourg.
- OFCs can be defined as a third category that are mainly much smaller, and provide more limited specialist services. OFCs as defined here, still range from centers which provide specialist and skilled activities, attractive to major financial institutions, and more lightly regulated centers that provide services that are almost entirely tax driven, and have very limited resources to support financial intermediation. While many of the financial institutions registered in such OFCs have little or no physical presence that is by no means the case for all institutions.

OFCs as defined in this third category, but to some extent in the first two categories as well, usually exempt (wholly or partially) financial institutions from a range of regulations imposed on domestic institutions. For instance, deposits may not be subject to reserve requirements, bank transactions may be tax-exempt or treated under a favorable fiscal regime, and may be free of interest and exchange controls. Offshore banks may be subject to a lesser form of regulatory scrutiny, and information disclosure requirements may not be rigorously applied.

Small countries, with small domestic financial sectors, may choose to develop offshore business and become an OFC for a number of reasons. These include income generating activities and employment in the host economy, and government revenue through licensing fees, etc. Indeed the more successful

OFCs, such as the Cayman Islands and the Channel Islands, have come to rely on offshore business as a major source of both government revenues and economic activity.

16.7 Advantages and disadvantages of OFC (IMF report)

OFCs can be used for *legitimate reasons*, taking advantage of:

- lower explicit taxation and consequentially increased after tax profit;
- simpler prudential regulatory frameworks that reduce implicit taxation;
- minimum formalities for incorporation;
- the existence of adequate legal frameworks that safeguard the integrity of principal-agent relations;
- the proximity to major economies, or to countries attracting capital inflows;
- the reputation of specific OFCs, and the specialist services provided
- freedom from exchange controls; and
- a means for safeguarding assets from the impact of litigation etc.

They can also be used for *dubious purposes*, such as tax evasion and money-laundering, by taking advantage of a higher potential for less transparent operating environments, including a higher level of anonymity, to escape the notice of the law enforcement agencies in the "home" country of the beneficial owner of the funds.

16.8 International financial centers across the world

The following is a list of some of the countries which have international finance centres

1. Anguilla
2. Antigua & Barbuda
3. Aruba
4. Bahamas
5. Bahrain
6. Barbados
7. Belize
8. British Virgin Islands
9. Brunei
10. Cayman Islands
11. Cook Islands
12. Cyprus
13. Dubai
14. Gibraltar
15. Guernsey
16. Hong Kong
17. Isle of Man
18. Jersey

19. Labuan
20. Liechtenstein
21. Madeira
22. Maldives
23. Malta
24. Marshall Islands
25. Mauritius
26. Monaco
27. Netherlands
28. Netherlands Antilles
29. Nevis
30. Niue
31. Panama
32. St Kitts
33. St Lucia
34. St Vincent & The Grenadines
35. Samoa
36. Singapore
37. Switzerland
38. Turks &
39. Caicos Islands
40. Vanuatu

Chapter 17

The Free Trade & Warehousing Zones (FT & WZ)

17.1 Introduction

The Free Trade & Warehousing Zones (FT & WZ) is a special category of Special Economic Zones with a focus on trading and warehousing. Chapter 7A of the Foreign trade Policy (2004-09) had introduced this concept before introduction in Special Economic Zones Act 2005

The Special Economic Zones Act, 2005 defines Free Trade and Warehousing zones under Sec 2 (n) as- "A Special Economic zone wherein mainly trading and warehousing and other related activities related thereto are carried on"

Hence, these Zones will operate on the same lines as SEZ and the provisions of the Special Economic Zones Act, 2005 and Special Economic Zones Rules 2006 shall apply to developers of FT&WZ and units in FT&WZ.

This scheme aims at creation of world class infrastructure for warehousing of various products, latest equipment, handling and transportation facilities, commercial office space, water, power, communication, and connectivity with one-stop clearance of import and export formalities to bolster the integrated zones as international trading hubs.

These zones are to be established in areas proximate to seaports, airports or dry ports so as to offer easy access by rail and road.

17.2 Establishment of FT&WZ

- Proposals for setting up of FT & WZs may be made by
 - public sector undertakings or
 - public limited companies or
 - By joint ventures in technical collaboration with experienced infrastructure developers.
- The proposals shall be considered by the Board of Approval in the Department of Commerce.
- On approval, the developer will be issued a letter of permission for the development, operation and maintenance of such FTWZ.
- Foreign Direct Investment would be permitted up to 100% in the development and establishment of the zones and their infrastructural facilities.
- The proposal must entail a minimum outlay of Rs.100 crores for the creation and development of the infrastructure facilities, with a minimum built up area of five lakh sq.mts.
- The developer shall be permitted to import duty free such building materials and equipment as may be required for the development and infrastructure of the zone. Such equipment

and materials as are sourced from the DTA shall be considered as physical exports for the DTA suppliers.

17.3 Maintenance of FT&WZ

The developer shall itself or through suitable special purpose arrangements, ensure a reliable mechanism for the proper maintenance of the common facilities and security of the FT&WZ.

17.4 Functioning

- The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions
- The goods shall be allowed for trading with or without labeling, packing or re-packing without any processing.
- Refrigeration for the purpose of storage and assembly of Completely Knocked Down or Semi Knocked Down kits shall also be allowed by the Free Trade and Warehousing units undertaking the said activities.
- The units in Free trade and warehousing zones may also re-sell or re-invoice or re-export the goods imported by them.
- All transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency.

17.5 Net Foreign Exchange criteria

Units in FTWZs shall be net foreign exchange earners. Net foreign exchange earning shall be calculated cumulatively for every block of five years from the commencement of warehousing and/or trading operations as per formula applicable for SEZ units.

17.6 Benefits of FT&WZ

- **Deferred Duty Benefits**

Importers of goods into India have to pay significant duties at the time the goods are brought into the country. For a company having its operations within a FTWZ, the custom duty would be payable only at the time the commodities are sold into the DTA.
- **Hubbing Opportunities**

Under efficient infrastructure and superior operational dynamics, companies can utilize the FTWZ as a hub for its operations and services to other countries and regions. Multi national vendors can be located within the FTWZ to facilitate imports whereby the items imported from other countries can be stored without paying duties till the time they are actually moved into the Domestic Tariff Area (DTA). Similarly, domestic units located within the FTWZ can facilitate exports.
- **Income & Service tax benefits**

The zone would provide exemptions on income tax as highlighted in section 80IA of the income tax act. Companies providing services from within the zone (such as logistics companies, warehouse/ storage providers, etc.) are exempt from payment of service tax, thereby reducing the logistics costs to users within the zone.
- **Excise Duty Exemptions**

All capital goods, spares, DG sets, packing materials etc. sourced from the domestic market for utilization within the zone, is exempt from excise duty, thereby providing significant savings

➤ **Benefit to Bulk Commodities such as fertilizers, dry chemicals, etc**

Since the FTWZs would be in close proximity to the ports, transportation of bulk commodities can be made easier by delaying the requirements such as bagging and containerizing them.

➤ **Benefit to Export Commodities**

Companies dealing in exports can receive their bills of lading on entering the FTWZ as all the goods entering the FTWZ would be deemed as exports.

Chapter 18

Facilities/ Exemptions/ Benefits to Special Economic Zones

18.1 Exemption from Taxes, Duties or Cess – Sec 7 & Sec 54 of the Special Economic Zones Act, 2005

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,

- A Unit in a Special Economic Zone; or
- A Developer;

Shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule

THE FIRST SCHEDULE

(See sections 7 and 54)

Enactments

1. The Agricultural Produce Cess Act, 1940 (27 of 1940).
2. The Coffee Act, 1942 (7 of 1942).
3. The Mica Mines Labour Welfare Fund Act, 1946 (22 of 1946).
4. The Rubber Act, 1947 (24 of 1947).
5. The Tea Act, 1953 (29 of 1953).
6. The Salt Cess Act, 1953 (49 of 1953).
7. The Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).
8. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).
9. The Sugar (Regulation of Production) Act, 1961 (55 of 1961).
10. The Textiles Committee Act, 1963 (41 of 1963).
11. The Produce Cess Act, 1966 (15 of 1966).
12. The Marine Products Export Development Authority Act, 1972 (13 of 1972).
13. The Coal Mines (Conservation and Development Act, 1974 (28 of 1974).
14. The Oil Industry (Development) Act, 1974 (47 of 1974).
15. The Tobacco Cess Act, 1975 (26 of 1975).
16. The Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978).
17. The Sugar Cess Act, 1982 (3 of 1982).
18. The Jute Manufactures Cess Act, 1983 (28 of 1983).
19. The Agricultural and Processed Food Products Export Cess Act, 1985 (3 of 1986).
20. The Spices Cess Act, 1986 (11 of 1986).

21. The Research and Development Cess Act, 1986 (32 of 1986).

18.2 Special fiscal provisions for Special Economic Zones- Chapter VI of the Special Economic Zones Act, 2005

i) CUSTOM DUTY

Every Developer and the entrepreneur is entitled to

- ❖ exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur- Sec 26(1)(a) of the Special Economic Zones Act,2005
- ❖ exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India- Sec 26(1)(b)

Points to note:

- ❖ Exemption is available on both goods imported from SEZ and goods exported from SEZ by developer or Entrepreneur
- ❖ Exemption is available only for carrying authorized operation by the entrepreneur or developer
- ❖ Benefit is also available to contractor appointed by developer or co-developer provided all documents are in joint name of developer and Contractor – Rule 10

ii) CENVAT

Exemption from CENVAT and Special duty of Excise

Every Developer and the entrepreneur is entitled to exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur – Sec 26(1) (c) of the Special Economic Zones Act, 2005.

Points to note:

- ❖ Exemption is available only for carrying authorized operation by the entrepreneur or developer
- ❖ Benefit is also available to contractor appointed by developer or co-developer provided all documents are in joint name of developer and Contractor – Rule 10 of the Special Economic Zones Rules, 2006

iii) SERVICE TAX

Every Developer and the entrepreneur is entitled to exemption from service tax under Chapter-V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone; – Sec 26(1)(e) of the Special Economic Zones Act, 2005 Further, this exemption is also available to Unit under construction as per Rule 31 of the Special Economic Zones Rules, 2006

iv) CENTRAL SALES TAX

Every Developer and the entrepreneur is entitled 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 authorized operations by the Developer or entrepreneur. – Sec 26(1) (g) of the Special Economic Zones Act, 2005

However this is subject to the condition as per Proviso to Rule 32 of the Special Economic Zones Rules, 2006 that the dealer selling goods in the course of inter state trade or commerce to a registered dealer under the Central Sale Tax Act, 1956 shall furnish a declaration in Form – I prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957.

v) SECURITIES TRANSACTION TAX

Securities Transaction Tax means tax leviable on taxable securities transaction. Every Developer and the entrepreneur shall be entitled to 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. Sec 26(1)(f) of the Special Economic Zones Act,2005

vi) STAMP DUTY

Proviso (3) to Section 3 of Indian Stamp Act, 1899 has been inserted vide Special Economic Zones Act 2005 Third Schedule Part III

PROVIDED that no duty shall be chargeable in respect of- (3) Any instrument executed, by, or, on behalf of, or, in favour of the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone. Explanation.- For the purposes of this clause, the expressions “Developer”, “Special Economic Zone” and “Unit” shall have meanings respectively assigned to them in clause (g), (za) and (zc) of section 2 of the Special Economic Zones Act, 2005.

18.3 Income Tax provisions

i) Exemption To New Units In Sez

Sec 10 AA of Income Tax Act, 1961 provides for exemption to newly established units in Special economic zones on or after 01.04.2005.

The conditions are as follows:

- assessee should be an entrepreneur (i.e. person who has been granted approval by Development Commissioner) as per Sec 2 (j) of SEZ Act,2005
- unit should begin to manufacture or produce articles or things or provide any services during the PY relevant to any AY commencing on or after 01.04.2006
- assessee should export his goods or services by any mode-physical or otherwise

Deductions allowable:

100% of Profits from export will be available for 5 consecutive years and 50% of Profits from exports for further 5 assessment years. For eleventh to fifteenth assessment year deduction of 50% of Profits for as credited to “Special Economic Zone Re-investment Reserve Account” will be available. This Special reserve can be utilized for Acquiring machinery or plant within three years .Until the acquisition of the machinery or plant, the amount can be utilized for the purposes of the business of the undertaking other than

- for distribution by way of dividends or profits or
- for remittance outside India as profits or
- for the creation of any asset outside India

Amalgamations and demerger:

Where an undertaking is transferred to another company under a scheme of amalgamation or demerger, the deduction under section 10AA shall be allowable in the hands of the amalgamated or the resulting company. However, no deduction shall be admissible under this section to the amalgamating company or the demerged company for the previous year in which amalgamation or demerger takes place

Conversion of free trade zone or export processing zone into a Special Economic Zone

In such cases, the period of ten consecutive assessment years referred to shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone. If period of ten years is completed it shall not be eligible for deduction from income.

ii) Exemption to Developer of Special Economic Zones

- (a) Exemption to developer of Special Economic Zones will be available under Sec 80- IAB of the Income Tax Act in respect of developers of SEZ notified on or after 01.04.2005

Deductions allowable:

A deduction of an amount equal to 100% of the profits and gains derived from such business for 10 consecutive assessment years will be available. The assessee has the option of claiming the said deduction for any 10 consecutive assessment years out of 15 years beginning from the year in which a SEZ has been notified by the Central Government

Transfer of undertaking

If a taxpayer who develops a special economic zone on or after April 1, 2005 ("transferor") transfers the operation/maintenance of such zone to another developer ("transferee"), then deduction shall be allowed to the transferee for the remaining period of 10 years as if the operation and maintenance were not so transferred.

Audit report

Accounts of the undertaking for the Previous year relevant to the Assessment year for which the deduction is claimed must have been audited, and the assessee must furnish, along with his return of income, the report of such audit in the prescribed form – Form 10 CCB duly signed and verified by the accountant

- (b) Exemption from Dividend distribution tax

Sec 111-O (6) provides that No tax on dividends would be chargeable in respect of the total income of an undertaking or enterprise engaged in

- ❖ developing a SEZ or
- ❖ developing and operating a SEZ or
- ❖ developing, operating and maintaining a SEZ

IF such dividend (whether interim or otherwise) is declared, distributed or paid by such Developer or enterprise, on or after the 1st day of April, 2005 out of its current income Further, there will be no tax either in the hands of the Developer or enterprise or person receiving such dividend

iii) Exemption of capital gains from transfer of capital assets

The exemption is available to all categories of assesses on capital gain arising on the transfer of certain capital asset of industrial undertaking from urban area to SEZ. (Whether developed in an urban area or not) under Sec 54 GA of the Income Tax Act, 1961.

Conditions

The Asset transferred should be machinery or plant or building or land or any rights in building or land

The capital gain should be utilized within one year before or three years after the date of transfer for the specified purpose.

The amount of capital gain which is not so utilised for the specific purposes should be deposited in an account with any specified bank or institution and utilised in accordance with the scheme notified by the Central Government

Exemption

The amount of exemption will be equal to a) amount of capital gains in shifting or b) cost and expenses incurred in shifting etc. whichever is lower.

iv) Income of a non-resident

- Interest received on a deposit made on or after the 1st day of April, 2005, in an Offshore Banking Unit by
 - ❖ Non resident or
 - ❖ a person who is not ordinarily resident in India Is exempt under (Section 10(15) (viii))
- Offshore Banking Unit is not required to make any tax deduction from the interest paid
 - ❖ On deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or
 - ❖ On borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India. (Sec 197 A (ID))

v) Offshore banking unit and unit of International Financial Service centre

Sec 80 LA of the Income Tax Act, 1961 provides for full exemption from income to offshore banking unit and unit in International Financial service centre for first five years and 50 % exemption in subsequent five years.

The income includes the following incomes:

- from an Offshore Banking Unit in a Special Economic Zone; or
- from the business referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 (10 of 1949) with an undertaking located in a Special Economic Zone or any other undertaking which develops, develops and operates or develops, operates and maintains a Special Economic Zone; or
- from any Unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a Centre in a Special Economic Zone.

Conditions:

- a report from a Chartered Accountant in Form No. 10CCF certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted along with the return of income.
- a copy of permission obtained under section 23(1)(a) of Banking Regulation Act should be submitted along with the return of income

vi) Industrial park scheme

The Central Government framed the scheme for industrial parks, -Industrial Park Scheme, 2002 in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80 IA of the Income-tax Act, 1961 (43 of 1961)

This scheme was applicable for any undertaking which develops, develops and operates or maintains and operates an Industrial Park for the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2006. However this has been extended up to 31.03.2009 by the Finance Act, 2006

Any undertaking which develops, operates or maintains an industrial park as notified in this scheme will be eligible for a deduction of 100 % profits derived from such business for ten consecutive years. The deduction can be claimed by the assessee for any ten consecutive years out of fifteen years beginning from the year in which the undertaking develops/operates/maintains the Industrial park.

vii) Investors in SEZ

Exemption is provided to investors in special economic Zones under Sec 10 (23G) of the Income Tax Act, 1961.

Incomes not included in total income

10(23G) any income by way of dividends [, other than dividends referred to in section 115-O], interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company [or a co-operative bank] from investments made on or after the 1st day of June, 1998 by way of shares or long-term finance in [any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or sub-section (3) of section 80-IAB] or a housing project referred to in sub-section (10) of section 80-IB] [or a hotel project or a hospital project] and which has been approved by the Central Government on an application made by it in accordance with the rules made in this behalf and which satisfies the prescribed conditions :

[Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.]

viii) Undertaking developing and building housing projects

Sec 80- IB (10) - Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings

The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if,

- such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,
 - ❖ in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

- ❖ in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.
- the project is on the size of a plot of land which has a minimum area of one acre:
- the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and
- the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.]

ix) Newly established undertakings in free trade Zones

A deduction of such profit and gains as are derived by an undertaking from the export of article or thing or computer software shall be allowed from total income of assessee.

Essential Conditions:

- it should begin manufacturing or producing articles/things or computer software during previous year
 - ❖ assessment Year 1981-1982 or thereafter in any free trade zone.
 - ❖ 1993-94 or thereafter in any EHTP or STP
 - ❖ 2000-01 or thereafter in any special Economic Zone
- it should not be formed by splitting up or reconstruction of an existing business.
- it should not be formed by transfer of machinery or plant, previously used for any purpose to new business.
- the sale proceeds of the article or thing should be brought into India by assessee in convertible foreign Exchange within 6month from the end of previous year.

Period of Tax Holiday:

The profits and gain will not be included in the total income of the assessee in respect of any 10 consecutive assessment years beginning with the year in which undertaking begins to manufacture ,produce article or thing or computer software

Section 10A (1A) Units established in special Economic Zone on or after 1.4.2002

- a deduction of 100% of profit and gains from such business from the total income for first 5 assessment years.
- thereafter 50% of such profits and gains for next 2 yrs.
- deduction beyond 7 year mentioned above for next 3 years can be claimed if certain conditions satisfied.

Consequent to insertion of new section 10AA providing for a tax holiday in respect of newly established Units in SEZ, sub-section (7B) has been inserted in section 10A,

“The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.”

x) Newly established 100 % export oriented units.

Special provisions in respect of newly established hundred per cent export-oriented undertakings- Sec 10 B

Salient Provisions of Sec 10 B

- A deduction of profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee:
- Where in computing the total income of the undertaking for any assessment year, its profits and gains had not been included by application of the provisions of this section as it stood immediately before its substitution by the Finance Act, 2000, the undertaking shall be entitled to the deduction referred to in this sub-section only for the unexpired period of aforesaid ten consecutive assessment years
- For the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:
- No deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2010 and subsequent years
- No deduction under this section shall be allowed to an assessee who does not furnish a return of his income on or before the due date specified under sub-section (1) of section 139.
- This section applies to any undertaking which fulfils all the following conditions, namely:
 - ❖ it manufactures or produces any articles or things or computer software;
 - ❖ it is not formed by the splitting up, or the reconstruction, of a business already in
 - ❖ it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.
- This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.
- The profits derived from export of articles or things or computer software shall be the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking
- The deduction under sub-section (1) shall not be admissible for any assessment year beginning on or after the 1st day of April, 2001, unless the assessee furnishes in the prescribed form (Form No. 56 G) along with the return of income, the report of an accountant, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

18.4 Other related provisions

- i) Environment clearances
- ii) Labour policy
- iii) Drugs, Pharmaceuticals & Narcotics
- iv) Textile policy
- v) Companies Act
- vi) FEMA
- vii) Amendments in Insurance Act
- viii) Amendments in Banking Regulation Act

i) Environment clearances

SEZ units are required to obtain no objection certificates from the State Pollution Control Board. Environmental Impact Assessment is required for 30 notified industries such as petroleum refineries, chemical fertilizers, pesticides, petro-chemical complexes, bulk drugs and pharmaceuticals, oil exploration, synthetic rubber, distilleries, raw skins and hides, dyes, cement, foundries, electro plating etc. In such cases clearance from the Ministry of Environment and Forest are required. However, the requirement of public hearing in such cases has been exempted for the units in SEZ.

ii) Labour Policy

Although Normal labour laws of the land apply to the units in Special Economic Zones., the respective State Governments may delegate the power of the Labour Commissioner to the Development Commissioner of SEZ and declare the Zone as public utilities.

iii) Drugs, Pharmaceuticals & Narcotics

SEZ units have been exempted from the requirements of Import licence, import registration and import through notified ports in respect to drugs and cosmetics under Drugs and Cosmetics Rules, 1945 vide Dept. of Health Notification GSR 528(E) dated 8.7.2003 .

iv) Textile Policy

SEZ units engaged in export of Cotton Waste and import of Cotton are not required to register with the office of Textile Commissioner

v) Companies Act, 1956

Schedule XIII of the Companies Act, 1956 contains two Parts

- Part I Conditions relating to appointment of managing or whole time director or a manager without approval of Central Government
- Part II Remuneration Payable by companies having Profits / No Profits /Inadequate Profit

Changes have made in both of them for Special Economic Zone

- There are no restrictions on appointment of non-resident as Managing Director/Wholetime Director. He should have a proper employment visa from Indian Mission abroad and should furnish details of company, principal employer and terms of appointment along with visa application.(Notification No GSR 670(E) dated 30-09-2002

Resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of employment as a managerial person and who has come to stay in India

- For taking up employment in India
- For carrying on a business or vocation in India

Managerial Remuneration under Companies Act 1956- In Schedule XIII Part II section II of Companies Act, 1956 there are maximum Limits for Maximum managerial remuneration in case of companies having no profit or inadequate profit depending on effective capital of the company with prior approval of Central government Maximum Limit is Rs.4,00,000 p.m for companies

Restriction in respect of managerial remuneration under companies Act has been relaxed in case of companies in SEZ. The remuneration can be up to Rs 20 lakhs per month (Rs 2.40 crores per annum) without approval of central Government. The relaxation is applicable if:

- The company has not raised any money by public issue of shares or debentures in India.
- The company has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for continuous period of 30 days in any financial year.
- (Notification No GSR 565(E) dated 14-08-2002)

vi) FEMA

- 100% FDI is allowed through automatic route for all manufacturing activities in SEZ except
 - ❖ arms and ammunition, Explosives and allied items of defence equipments, Defence aircrafts and warships
 - ❖ atomic substances, Narcotics and Psychotropic Substances and hazardous Chemicals
 - ❖ distillation and brewing of Alcoholic drinks and
 - ❖ cigarette/cigars and manufactured tobacco substitutes.
- Articles reserved for SSI
SEZ Unit can manufacture articles reserved for SSI even if foreign equity exceeds 24%.No License is required (Department of Industrial License Press Note No 5 dated 29-03-2000 Notification 7(11)/2000-IP dated 04-12-2000)
- No limit for receipts of export proceeds
No Time Limit for export of export proceeds which is normally 6 months for others (Foreign Exchange Management (Export of Goods and Services) Regulation 2000)
- Branch /Office /Unit in SEZ by person resident outside India Branch office may be set up in SEZ to undertake manufacturing and service activities without permission of RBI in those sectors where 100% FDI is permitted Such unit should function on stand alone basis i.e. it should be isolated and restricted to SEZ and it should not carry on business outside SEZ. (Foreign Exchange Management (Establishment in India of Branch or other place of businesses) Regulation 2000)
- DTA units can pay for goods in Foreign Exchange for which goods are supplied by SEZ to DTA –
RBI Circular 8/2005-06 dated 01/07/2005
- Netting off by SEZ unit-
In some cases, SEZ unit may have transactions of import and also export with the same foreign customer .In such case, exporter can net off export receivables against import payments. The transactions should be between same two properties and there should be proper documentation. This permission is only for SEZ units. (RBI Circular 8/2005-06 dated 01/07/2005)
- Foreign Exchange Derivative Contracts

A Unit in SEZ can enter into contract in commodity exchange or market outside India to hedge the price risk in the commodity on export/import without prior approval of RBI (Foreign Exchange Derivative Contracts) Regulation, 2000

➤ External commercial Borrowings (ECB) by SEZ

SEZ can raise ECB for its own requirements and borrowed funds shall not be transferred to its sister concern or any other Unit in DTA (RBI Circular 2/2005-06 dated 01/07/2005)

➤ Direct dispatch of Documents to Foreign Buyer

SEZ Units can dispatch export documents direct to consignee outside India. These need not be routed through authorized dealer Remittance should be obtained and GR/SDF form should be submitted to authorized dealer with in 21 days for monitoring RBI Circular 8/2005-06 dated 01/07/2005

➤ Job Work abroad

SEZ Units can undertake Job work abroad and export goods from that country itself Exporter has to make satisfactory arrangement for realization of full exports proceeds (RBI Circular 8/2005-06 dated 01/07/2005)

➤ Payment to SEZ by DTA unit in Foreign Exchange

A EOU/SEZ/STP/EHTP/BTP may supply goods to unit in DTA. In such case the DTA unit can pay for the goods in foreign exchange, for which foreign exchange can be released by authorized dealers (RBI Circular 8/2005-06 dated 01/07/2005)

➤ Foreign Currency Account

A unit located in SEZ can hold, open and maintain a Foreign Currency Account with authorized dealer in India. All Foreign Exchange Funds received by SEZ are credited to this account. However, Foreign exchange purchased in India against Rupees can not be credited to this account without permission of RBI .the funds in the account can be used for any bona fide trade transactions with person resident in India or otherwise. The balances in the account are exempt from all restrictions in respect of current account transactions. Restrictions on EEFC account in respect of current account transactions are not applicable to SEZ accounts, except that gifts exceeding US \$ 5,000 and donations exceeding US \$ 10,000 per remitter/donor per annum are not permitted. Funds in these accounts shall not be lent or made available to any person or entity resident in India, except to another SEZ unit.

(Regulation 6A of FEMA(Foreign Currency accounts by a person resident in India) Regulations ,2000 and RBI Circular 8/2005-6 dated 01/07/2005)

vii) Amendments in Insurance Act, 1938

A proviso has been added in Sec 2C (1) after the third proviso by the Third Schedule- Part I of the Special Economic Zones Act, 2005 and a new Sec 2 CA has been inserted.

Accordingly, an insurance company can carry on insurance business in special economic zone and the Central Government has the power to apply provisions of this Act to Special Economic Zones.

viii) Amendments in Banking Regulation Act, 1949

Power to exempt in certain cases

S 53 provides that The Central Government may, on the recommendation of the Reserve Bank, declare, by notification in the Official Gazette, that any or all of the provisions of this Act shall not apply to any banking company or institution or to any class of banking companies or any of their branches functioning or located in any Special Economic Zone established under the Special Economic Zones Act, 2005.

A copy of every such notification shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both the Houses

Chapter 19

Recent Developments on Special Economic Zones

19.1 Removal of caps on SEZ

The empowered Group of Ministers on Special Economic Zones, headed by the Defence Minister, Mr Pranab Mukherjee, decided on 23.08.2006 to remove the existing cap of 150 for the number of SEZs that can be established within the country.

19.2 List of authorised activities in non-processing area of SEZ's to be notified

19.3 Criteria for approval of SEZ developers

The Board of Approvals in its meeting held on 21st September, 2006 discussed and decided the procedure to be adopted by the Board of Approval while approving infrastructure in the non-processing area of the Special Economic Zones. In this regard, it was decided that the Central Government will notify a list of authorised operations (**Annex. I**). This list would be used by the Board of Approval for authorizing operations which only would qualify for exemptions, concessions and drawback.

The Board of Approvals also agreed on certain criteria (**Annex. II**) to be followed by the Board for approval of SEZ Developers

Annexure-I

List of authorised operations eligible for approval by the Board of Approval

- **IT/ITES, Bio-technology & Gems & Jewellery SEZ:**
 - ❖ Roads with Street lighting, Signals & Signage
 - ❖ Water treatment plant, water supply lines (dedicated lines upto source), sewage lines, storm water drains and water channels of appropriate capacity
 - ❖ Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal, Sewage treatment plants
 - ❖ Electrical, Gas & PNG Distribution Network including necessary sub-stations of appropriate capacity, pipeline network etc
 - ❖ Security offices, police posts, etc, at entry, exit and other points within and along the periphery of the site.
 - ❖ Effluent treatment plant and pipelines and other infrastructure for Effluent treatment
 - ❖ Office space
 - ❖ Parking including Multi-level car parking (automated / manual)
 - ❖ Telecom and other communication facilities including internet connectivity
 - ❖ Rain water harvesting plant

- ❖ Power (including power back up facilities)
 - ❖ Air conditioning
 - ❖ Swimming pool
 - ❖ Fire protection system with sprinklers, fire and smoke detectors
 - ❖ Recreational facilities including club house, Indoor/Outdoor games, gymnasium
 - ❖ Employee welfare facilities like ATMs, Crèche, Medical center and other such facilities
 - ❖ Shopping arcade/Retail space
 - ❖ Business/Convention Centre
 - ❖ Common Data centre with inter-connectivity
 - ❖ Housing/Service apartments
 - ❖ Play ground
 - ❖ Bus bay
 - ❖ Food Services including Cafeteria, food court(s), Restaurants, coffee shops, canteens and catering facilities
 - ❖ Landscaping and water bodies
 - ❖ Clinic & Medical Centers
 - ❖ Wi Fi/Wi Max Services
 - ❖ Drip and Micro irrigation systems
 - ❖ Any other operation ancillary or incidental to operations specified above from (i) to (xxviii) which the Board of Approval may authorise from time to time.
- **Sector Specific SEZs**
- ❖ Roads with Street lighting, Signals and Signage.
 - ❖ Water treatment plant, water supply lines, sewage lines, storm water drains and water channels of appropriate capacity
 - ❖ Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal and Sewage treatment plants
 - ❖ Electrical, Gas & PNG Distribution Network including necessary sub-stations of appropriate capacity, pipeline network etc
 - ❖ Security offices and police posts at entry, exit and other points within and along the periphery of the site.
 - ❖ Effluent treatment plant and pipelines and other infrastructure for Effluent treatment
 - ❖ Office space/Shopping arcade/Retail space/ Multiplex
 - ❖ Housing
 - ❖ Hotel/Service apartments
 - ❖ Clinic / Medical Centers/ Hospital
 - ❖ School/Technical Institution/Educational Institution
 - ❖ Parking including Multi-level car parking (automated / manual)
 - ❖ Telecom and other communication facilities including internet connectivity
 - ❖ Business/Convention Centre
 - ❖ Common Data centre with inter-connectivity

- ❖ Rain water harvesting plant
 - ❖ Power (including power back up facilities)
 - ❖ Rail head
 - ❖ Access control and Monitoring system
 - ❖ Swimming pool
 - ❖ Fire Station, Fire protection system with sprinklers, fire and smoke detectors
 - ❖ Recreational facilities including club house, Indoor/Outdoor games and gymnasium
 - ❖ Employee welfare facilities like ATMs, Crèche, Medical center and other such facilities
 - ❖ Play grounds
 - ❖ Bus bays
 - ❖ Food Services including Cafeteria, food court(s), Restaurants, coffee shops, canteens and catering facilities
 - ❖ Landscaping and water bodies
 - ❖ Wi Fi/Wi Max Services
 - ❖ Drip and Micro irrigation systems
 - ❖ Any other operation ancillary or incidental to operations specified above from (i) to (xxix) which the Board of Approval may authorise from time to time.
- **Multi Product SEZs**
- ❖ Roads with Street lighting, Signals and Signage
 - ❖ Water treatment plant, water supply lines, sewage lines, storm water drains and water channels of appropriate capacity
 - ❖ Sewage and garbage disposal plant, pipelines and other necessary infrastructure for sewage and garbage disposal and Sewage treatment plants
 - ❖ Electrical, Gas & PNG Distribution Network including necessary sub-stations of appropriate capacity, pipeline network etc
 - ❖ Security offices and police posts at entry, exit and other points within and along the periphery of the site.
 - ❖ Effluent treatment plant and pipelines and other infrastructure for Effluent treatment
 - ❖ Office space/Shopping arcade/Retail space/multiplexes
 - ❖ Housing
 - ❖ Hotel
 - ❖ Clinic /Medical Centers / Hospital
 - ❖ School/Technical Institution/Educational Institution
 - ❖ Parking including Multi-level car parking (automated / manual)
 - ❖ Access control and Monitoring system
 - ❖ Telecom and other communication facilities including internet connectivity
 - ❖ Rain water harvesting plant
 - ❖ Power (including power back up facilities)
 - ❖ Swimming pool

- ❖ Fire Station, Fire protection system with sprinklers, fire and smoke detectors
- ❖ Rail head within the SEZ
- ❖ Port
- ❖ Airport/Air Cargo Complex
- ❖ ICD
- ❖ Banks
- ❖ Recreational facilities including club house, Indoor/outdoor games and gymnasium.
- ❖ Employee welfare facilities like ATMs, Crèche, Medical center and other such facilities
- ❖ Play grounds
- ❖ Golf course
- ❖ Bus bays
- ❖ Food Services including Cafeteria, food court(s), Restaurants, coffee shops, canteens and catering facilities
- ❖ Landscaping and water bodies
- ❖ Wi Fi/Wi Max Services
- ❖ Drip and Micro irrigation systems
- ❖ Any other operation ancillary or incidental to operations specified above from (i) to (xxxii) which the Board of Approval may authorise from time to time.

Annex. II

- Criteria to be followed by the Board for approval of SEZ Developers
 - ❖ Minimum Investment or Net worth of the Promoter Company & all Group companies & Flagship companies as follows
 - Sector specific SEZs:
Minimum investment of Rs.250 crores or net worth of Rs.50 crores
 - Multi product SEZs:
Minimum investment of Rs.1000 crores or net worth of Rs.250 crores

Proposals not meeting the above minimum investment or net worth criteria with enough justification for the same, to be considered on merits by the Board of Approvals.

19.4 No SEZ on prime agriculture Land

Land being a state subject, the Centre has directed the states that mainly waste and barren land and if necessary single crop agricultural land alone should be acquired for the SEZ.

It has been further clarified that if perforce a portion of double-cropped agricultural land has to be acquired to meet the minimum area requirements, the same should not exceed 10% of the total land required for the SEZs.

Chapter 20

An Introduction to Other Schemes including STP, EHTP, BTP and AEZ

20.1 SOFTWARE TECHNOLOGY PARKS (STP)

Software Technology Parks (STPs) are export oriented projects catering to the needs of software development for exports.

- STPs can be set up by
- Central Government,
- State Government,
- Public or Private Sector Undertakings
- Or any combination thereof.

An STP may be an individual unit by itself or it may be one of such units located in an area designated as STP Complex by the Ministry of Information Technology.

Under STP Scheme, a software development unit can be set up for the purpose of development of software, data entry and conversion, data processing, data analysis and control data management or call centre services for exports

The Government has already set up Software Technology Parks at Pune, Bangalore, Bhubaneswar, Hyderabad, Thiruvananthapuram, Gandhinagar and Noida. In these Parks all the required facilities are made available.

The STP Scheme is administered by the Ministry of Information Technology.

20.2 ELECTRONIC HARDWARE TECHNOLOGY PARKS (EHTP)

For encouraging exports of electronic hardware items including hard disk drives, computers, television, etc., such parks have been developed by the Ministry of Information Technology. An Electronic Hardware Technology Park (EHTP) may be an individual unit by itself or a unit located in an area designated as EHTP Complex. As in the case of STP Scheme, the EHTP Scheme is also administered by the Ministry of Information Technology.

Under EHTP Scheme, a unit can be set up for the purpose of manufacture and development of electronics hardware, or electronics hardware and software in an integrated manner for exports.

The policy provisions for STP and EHTP Schemes are substantially the same as those applicable to the general EOU Scheme.

Thus, the provisions of EXIM Policy regarding importability of goods, DTA sale, clearance of samples, sub-contracting, inter-unit transfer, repairs, re-conditioning and re-engineering, sale of unutilized material, debonding etc. are more or less same for STP/EHTP units as well as general EOUs.

To implement STP scheme, the Government has issued two notifications, namely, 138/91-Cus, dated 22-10-1991 (for units located in Software Technology Park Complexes) and 140/91-Cus, dated 22-10-1991 (for stand alone software development units) allowing duty free import of specified goods to such units.

In respect of EHTP scheme, notification No 95/93-Cus, dated 2-3-1993 (for units located in Electronic Hardware Technology Park Complexes) and 96/93-Cus, dated 2-3-1993 (for stand alone electronic hardware units) allow duty free import of specified goods to such units.

To enable such STP /EHTP units to procure specified goods from DTA without payment of duty, a notification No. 1/95-CE, dated 4-1-1995 has been issued.

The sector specific provisions in respect of STP/EHTP units are as follows:-

- i) EHTP/ STP units are allowed to make DTA sale of software through data communication/ telecommunication links. This is subject to the condition that the Director of STPI (Software Technology Park of India) certifies the valuation of such software sold in DTA. (Circular No. 54/98-Cus, dated 31-7-1998).
- ii) STP units are allowed to import telematic infrastructure equipments for creating a central facility for export of software without payment of duty. The central facility so developed by STP units for transmission of data / software for export are allowed to be utilised by other STP units and units in DTA for export of software. In case of EHTP unit, such facility is not available. However, agency/society authorised to set up the EHTP Complex is allowed to create a central facility for use by EHTP units located within such Complex.
- iii) Under STP scheme, the units are allowed to render consultancy services for development of software "on site" abroad and consultancy fees received by such units in convertible foreign currencies are deemed to be exports for the purposes of fulfillment of export obligation under the Scheme.
- iv) The STP units are allowed to use the computer system for the purpose of training including commercial training provided the unit has achieved the prescribed NFEP. However, computer terminals are not allowed to be installed outside the bonded premises for the purpose of imparting training. In case of EHTP, the units are allowed to use computer system for imparting training to the workers only.
- v) The STP located in the same premises or in an adjoining premises which belongs to the same owner are allowed to share specific goods as mentioned in Notification 52/2003-Cus and 22/2003-CE dated 31.03.2003

The provisions at serial (i), (iii) and (iv) are also applicable to the software development units under general EOU scheme

The facility of availing CENVAT Credit on input goods and services has been extended to EOU/STP/EHTP units in 2004. In cases where development of software is not a taxable activity and does not attract Central Excise duty, STP units availing services or procuring goods on payment of duty, Service Tax & Central Excise for development and export of software, such units shall not be able to use the CENVAT credit facility.

Approval of EHTP/STP units

Approval shall be granted by the officer designated by the Ministry of Communication and Information Technology, Department of Information Technology/Director (STPI). Such officer shall also exercise powers of adjudication.

Criteria for automatic approval as under Appendix 14 1B shall be followed.

20.3 BIO TECH PARKS (BTP)

BTP means Biotechnology Park as notified by Director General of Foreign Trade on the recommendation of the Department of Biotechnology

Biotechnology is a fast emerging sector and India has many comparative advantages in terms of knowledge, skills, R&D facilities and costs in the sector. India has core competencies in bioprocess engineering; gene manipulation of microbes and animal cells; n extraction and isolation of plants and animal products; recombinant DNA technology of plants and animals; Infrastructure in fabricating bio-reactors and processing equipment. Indian biotech companies have succeeded in development and production of vaccines and indigenous tests

Bio Technology Park (BTP) can be set up by the Central Government, State Government, Public or Private Sector Undertakings or any combination thereof.

Application for setting up of BTP shall be submitted to the Department of Bio Technology and such applications which meet the guidelines prescribed by the Department of Bio Technology will be approved and recommended to the DGFT for notification.

Criteria for automatic approval as under Appendix 14 1B shall be followed.

Policy Initiatives

The union government and several state governments have taken initiatives to encourage entrepreneurs to set up biotech industries in their states.

20.4 AGRI EXPORT ZONE (AEZ)

The Government of India (GOI) had announced the creation of Agri Export Zone (AEZ) in the EXIM POLICY 2001-02 with the objective of promoting greater exports of fresh and processed agricultural produce from the country The scheme is implemented by the Ministry of Commerce, Gol, through APEDA (the Agriculture and Processed Food Export Development Authority), New Delhi – the nodal agency for AEZ.(<http://www.apeda.com/>)

Under AEZ all aspects of agriculture such as production, research, development, extension, post harvest management and marketing are addressed in a focused manner for successful implementation. For instance, modern production practices are introduced for production of exportable quality produce and improved productivity. Similarly there is an emphasis on setting up of appropriate produce-specific post harvest infrastructure and introduction of post harvest practices, right from farm all the way to market.

AEZ are to be identified by the State Government, who would evolve a comprehensive package of services provided by all State Government agencies, State agriculture universities and all institutions and agencies of the Union Government for intensive delivery in these zones. Corporate sector with proven credentials would be encouraged to sponsor new agri export zone or take over already notified agri export zone or part of such zones for boosting agri exports from the zones.

Services which would be managed and co-ordinated by State Government/corporate sector and would include provision of pre/post harvest treatment and operations, plant protection, processing, packaging, storage and related research & development etc. APEDA will supplement, within its schemes and provisions, efforts of State Governments for facilitating such exports.

Units in AEZ would be entitled for all the facilities available for exports of goods in terms of provisions of the respective schemes.

The Foreign Trade policy 2004-09 defines "AEZ" to mean Agricultural Export Zones notified by DGFT in Appendix 8 of Handbook (Vol 1).

The Special Economic Zones Act 2005, has defined under Sec 2 (r) "manufacture" means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining;

Activities of Agri Export Zones are included in definition of manufacture Section 2 (r) of Special Economic Zones Act 2005. To get deduction under income tax provisions both by developers and units in SEZ, the SEZ must be notified by Central Government as SEZ. Hence Agri Export Zones should be notified as SEZ to avail benefits under Income Tax Act 1961.

The 60 AEZs sanctioned by the Steering Committee envisaged an investment of Rs.1717.95 crores and export of Rs. 11821.47 crores over a period of 5 years. Against these projections, these AEZs have so far crystallised an investment of Rs. 811.18 crores and exports of Rs. 5316.31 crores over the last four years

Chapter 21

Table depicting State Economic Policies and State Economic Acts

S.No	Name of State	website	SEZ Act	SEZ Policy	SEZ Bill
1	ANDHRA PRADESH	apsez.com			x
	Date of & Page No.		19.12.2005	9.04.2002 [4 – 11]	-
2	ARUNACHAL PRADESH	arunachalpradesh.nic.in	x	x	
3	ASSAM	assamgovt.nic.in	x	x	
4	BIHAR	bihar.nic.in	x	x	
5	CHATTISHGARH	chhattisgarh.gov.in/	x	x	
6	DELHI	delhigovt.nic.in	x	x	
7	GOA	goagovt.nic.in	x		
	Date of & Page No.			5.06.2006 [11 – 15]	
8	GUJARAT	gujaratindia.com			
	Date of & Page No.		10.2.2004 [15 – 33]	19.7.2002 [33 – 38]	
9	HARYANA	haryana.gov.in			
	Date of & Page No.		23.01.2006 [38 – 51]	04.05.2006	
10	HIMACHAL PRADESH	himachal.nic.in	x	x	
11	JHARKHAND	jharkhand.gov.in	x		
	Date of & Page No.	jharkhandindustry.in		2.08.2003 [52 – 58]	
12	JAMMU & KASHMIR	jammukashmir.nic.in	x	x	
13	KARNATKA	karnataka.com/industry	x		
	Date of & Page No.			25.2.2002 [59 – 62]	
14	KERALA	industry.kerala.gov.in	x		
	Date of & Page No.			17.6.2003 [62 – 68]	
15	MADHYA PRADESH	mpgovt.nic.in			

Table depicting State Economic Policies and State Economic Acts

		sezindore.com			
	Date of & Page No.		[69 – 77]	[77 – 88]	
16	MAHARASTRA	maharashtra.gov.in			
	Date of & Page No.		Presently it is in force [88 – 117]	12.10.2001 [117 – 124]	Draft
17	MANIPUR	manipur.nic.in	x	x	
18	MEGHALAYA	meghalaya.nic.in	x	x	
19	MIZORAM	mizoram.nic.in	x	x	
20	NAGALAND	nagaland.nic.in	x	x	
21	ORISSA	orissagov.nic.in	x		
	Date of & Page No.			10.11.2003 [124 – 131]	
22	PUNJAB	punjabgovt.nic.in	x		
	Date of & Page No.			11.8.2005 [132 – 137]	
23	RAJASHTHAN	rajasthan.gov.in	x		
	Date of & Page No.			30.11.2002 [137 – 141]	
24	SIKKIM	sikkim.nic.in	x	x	
25	TAMIL NADU	tn.gov.in	x		
	Date of & Page No.			2003 [140 – 144]	
26	TRIPURA	tripura.nic.in	x	x	
27	UTTAR PRADESH	upgov.nic.in			
	Date of & Page No.		15.6.2002 [144 – 154]	6.9.2002 [155 – 159]	
28	UTTARANCHAL	gov.ua.nic.in	x	x	
29	WEST BENGAL	www.wbgov.com			
	Date of & Page No.		2003 [159 – 171]	12.06.2003 [172 – 176]	
S. No	Name of State	website	SEZ Act	SEZ Policy	SEZ Bill
1	ANDAMAN NICOBAR ISLAND	www.and.nic.in	x	x	
2	CHANDIGARH	chandigarh.nic.in	x		
	Date of & Page No.			14.3.2005 [176– 183]	

3	DADARA & NAGAR HAVELI	dnh.nic.in	x	x	
4	DAMAN & DIU	daman.nic.in	x	x	
5	LAKSHDEEP	lakshadweep.nic.in	x	x	
6	PONDICHEERY	pondicherry.nic.in	x	x	