

Government amends SEZ Rules for allowing demarcation of 'non-processing area' from SEZ area for setting up and operation of non SEZ businesses engaged in IT/ITeS

The Ministry of Commerce and Industry has amended the Special Economic Zones Rules, 2006 (SEZ Rules) for allowing demarcation of non-processing areas in the Information Technology (IT) or Information Technology Enabled Services (ITeS) SEZs for businesses engaged in the IT/ITeS effective from 6 December 2023 (New Rule 11B has been inserted). Thus, the government has now permitted the non-SEZ units engaged in only IT/ITeS businesses to operate from the demarcated non-processing area of an IT/ITeS SEZ.

Key aspects for consideration:

- Upon request of a Developer of an IT/ITeS SEZ, the Board of Approval (BOA) may, permit demarcation of a portion of the built-up area of an IT/ITeS SEZ as a Non-processing area.
- A Non-processing area may be used for setting up and operation of businesses engaged in IT or ITeS as per conditions specified by the Board of Approval.
- Non-processing area shall consist of complete floor and part of a floor shall not be demarcated as a non-processing area.
- To ensure adequate screening of movement of persons as well as goods in and out of their premises appropriate access control mechanisms shall be provided in non-processing area of an IT/ITeS SEZ.
- Permission for demarcation of a non-processing area in an IT or ITeS SEZ for business engaged in IT/ITeS shall be granted by the BOA only after repayment of tax benefits without interest by the Developer as under:
 - tax benefits attributable to the non-processing area, calculated as the benefits provided for the processing area of the SEZ, in proportion of the built-up area of the non-processing area to the total built up area of the processing area of the IT/ITeS SEZ;
 - tax benefits already availed for creation of social or commercial infrastructure

and other facilities if proposed to be used by both the IT/ITeS SEZ and business engaged in IT/ITeS in non-processing area.

- amount to be repaid by Developer shall be based on a certificate issued by a Chartered Engineer.
- The demarcation of a non-processing area shall not be allowed if it results in decreasing the processing area to less than fifty per cent of the total area or less than the area specified.
- The businesses engaged in IT/ITeS in a non-processing area shall not avail any rights or facilities available to SEZ Units including no tax benefits on operation and maintenance of common infrastructure and facilities.
- The businesses engaged in IT/ITeS in a non-processing area shall be subject to provisions of all Central Acts and rules and orders made thereunder, as are applicable to any other entity operating in domestic tariff area.

Our Comments

Representations were made by the industry and SEZ developers to permit non SEZ businesses engaged in IT/ITeS to operate from SEZ area. Thus, this is a much awaited and welcome move from the government and will help increase the occupancy levels of SEZs. It will also provide flexibility as well as access to SEZ's infrastructure to such non SEZ IT/ITeS businesses.