Summary: Special Economic Zone (SEZ) Scheme is an important and vital instrument for economic growth and export support strategy in India. Through successful implementation of this scheme the objectives of boosting exports, Increasing foreign investments and by this way earning foreign exchange, generating employment , getting quality manpower, development of backward and poor areas etc can be achieved.

This particular article gives knowledge of setting up procedure of an SEZ in brief. Hopefully this will be useful for CA professionals in updating their knowledge and data bank as far as SEZ's are concerned.

Minimum Area Requirement:

The minimum area requirement for setting up a SEZ has been laid down in the SEZ Rules (Rule 5). While fixing the minimum area requirement for SEZ, due consideration is given to following factors:-

(a) Whether SEZ is multi-product or sector specific?
(b) Whether SEZ is located in special category states namely, Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himachal Pradesh, Uttaranchal, Sikkim, Jammu & Kashmir, Goa or Union Territory?
(c) Whether SEZ is for special sector namely IT sector, Gems & jewellery, Bio –Tech, Non-Conventional Energy?
(d) Whether the SEZ is a port or airport based SEZ or it is a Free Trade Warehousing Zone?

- In general minimum area limit prescribed is 1000 hectares. However for sector specific SEZ, Service Sector SEZ and Port-airport based SEZ, the limit is of 100 hectares. In special category states and union territory these minimum area limits are 200 hectares and 50 hectares respectively.
- It should be noted that it is pre requisite for setting up of an SEZ that the required area should be contiguous and would be a vacant land. There was lack of clarity as to what would constitute "vacant land". Now the SEZ Rules, 2006 has been amended to define the term "vacant land".
- The term "vacant land "has been defined as the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.

Processing Area and Non-Processing Area:

- In case of SEZ, a minimum 50% of the total area is required to be earmarked for developing processing area. The processing area is that area in the SEZ where units can be located for manufacturing of goods or rendering of services. The Free Trade and Warehousing Zone can be set up only on the processing area.

- The non processing area is the area which is intended to provide support facilities to the SEZ processing area activities and may include commercial & social infrastructure. The SEZ can have business, residential or recreational facilities located in the non-processing area. Such activities need prior authorization of the Board of Approval. Only those authorized activities approved by the BOA shall be eligible for exemptions from the duties and taxes.

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- As regards access of support infrastructure in the non processing area by the outsiders, the decision is required to be taken by the BOA on case to case basis. However, it is expected that the non processing area facilities would primarily cater to the needs of the SEZ.

Free Trade & Warehousing Zones:

Free Trade & Warehousing Zone is a special category SEZ with a focus on trading and warehousing. The motto of such zone is to create trade related infrastructure to facilitate import and export of goods and services with freedom to carry out trade transaction in free currency. The important features of FTWZ are as follows:

- The FTWZ can be set up by public sector undertaking or public limited companies or by joint ventures in technical collaboration with infrastructure developer.
- 100% FDI allowed in development and establishment of FTWZ.
- FTWZ may be set up over an area of forty hectares or more with a built up area not less than 1 lakh square meters.
- FTWZ may also be et up as a part of multi product Special Economic Zone.
- FTWZ may also be set up within a sector specific SEZ subject to the condition that maximum area under such FTWZ should not exceed more than 20% of the processing area of such sector specific SEZ.
- The Developer of FTWZ is allowed duty free materials for setting up of such Zone.

Application for setting up of SEZ:

The application for setting up of SEZ is specified in the format 'Form-A' annexed to the SEZ Rules, 2006. A checklist has been incorporated in the 'Form-A' and the developer while submitting the proposal shall be required to ensure the particulars provided in the checklist are filled up properly.

The particulars of the check list are as under:

1. Name of the developer.
2. Proposed area of the location of the SEZ.
3. Whether proposal is for formal or in-principle approval? (in case land is In possession of the promoter, it is considered for formal approval).
4. Is it a multi-product SEZ?
5. If it a sector specific SEZ, name of the sector is?
6. Area of the SEZ (in hectares)
7. Whether undertaking and affidavit has been submitted?
8. Whether project report has been submitted?
9. Whether land is owned/ leased and is in possession of the developer?
10. Whether the land has existing structure or is vacant?
11. Projected investment in the project.
12. Projected exports from the project.
13. Projected employment from the project.
14. Sources of funds for the project.

15. Net worth of the applicant duly supported by audited accounts of the developer for the last 3 years
16. Extent of FDI in million US Dollars
17. Sources of FDI (country and company details may be provided)

It may also be noted that the department of commerce has laid down the procedure for online filing and processing of application for setting up of SEZ vide Instruction F.NO. D.12/13/2008 SEZ dated 21-10-2008.

Forwarding of proposal:

The proposal for setting up the SEZ after identifying the area is required to be submitted to the state government concerned. Rule 3 of the SEZ Rules has been amended so as to provide that the proposal for setting up of SEZ to be submitted to the concerned Development Commissioner, who with in a period of 15 days, will forward the proposal to the BOA along with his inspection report and recommendations of the state government. Further, Rule 4 of the SEZ Rules, 2006 provides that the State Government is required to forward the proposal to the BOA along with its recommendations, within 45 days of receipt of the proposal.

Approval of SEZ:

As per the existing practice, based on the recommendations of the state government and Developer's written statement regarding possession of land, Board of Approval grants formal approval. Documents such as land possession/ownership including survey number/area map, non-encumbrance certificate, vacancy & contiguity report etc are scrutinized by the Development Commissioner and only when these are found to be in order, Development Commissioner recommends to the Department of Commerce for notification.

Issuance of Letter of Approval (LOA):

The Central Government (Ministry of Commerce) within 30 days of receipt of the communication from the BOA regarding approval of the proposal is required to issue Letter of Approval (LOA) to the developer in terms of section 3(10) of the SEZ Act.

General conditions of LOA

(a) The Developer is required to obtain required approval from various statutory authorities under relevant statues and regulations of the government of India and the State government and local bodies.
(b) The Developer is required to make adequate provisions for rehabilitation of the displaced persons as per the RR Policy of the State Government.
(c) The Project is required to be implemented and operated in terms of the Special Economic Zone Act, 2005 and the Rules made there under.
(d) The Developer is required to comply with the environmental requirements.
(e) The Developer is required to abide by the local law, rules, regulations or bye-laws in regard to the area planning, Sewerage disposal, Pollution Control, Labour Laws and the like as may be locally applicable.
(f) The Developer is required to raise the funds for the project. External Commercial Borrowings (ECB), if any, will be as per the guidelines of the Ministry of Finance, Department of Economic Affairs, Government of India, New Delhi.

Acceptance of Terms & Conditions of LOA

The Developer is required to submit the acceptance of all the terms and conditions indicated in the LOA within 30 days from the date of issue of LOA to the Director (SEZ), Department of Commerce, Udyog Bhawan, New Delhi-11.

Validity Period of LOA and Extension of LOA:

- In case the land is in possession of the developer and the LOA is issued in FORM-B, such LOA is valid for a period of 3 years, within which at least one unit has to commence production and SEZ will become operational from the date of commencement of such production. However the BOA may extend the validity period of LOA for which an application is required to be made to the concerned Development Commissioner in FORM C-1.
- In case the land is not in possession of the Developer and the LOA is issued in FORM- B1 under an in-principle approval, such LOA shall be valid for a period of 1 year. During this one year the developer will have o take effective steps for possession of land. However the BOA may extend the validity period of the in-principle LOA for which an application is required to be made to the concerned Development Commissioner in FORM C-2.

Notification of SEZ

Once the formal LOA has been issued to the Developer in FORM-B, the Developer is required to furnish the following to the Central Government for notification of SEZ:

(a) The exact particulars of the identified area where SEZ is intended to be set up.
(b) A certificate from the concerned state Government stating that the Developer has legal possession and irrevocable rights to develop the said area as SEZ and the area is free from all encumbrances.
(c) Where the Developer has lease hold rights over the area, such lease shall not be less than 20 years.

Conversion of SEZ from one class to other:

In case, after approval of SEZ, the developer acquires more contiguous and vacant land which together with the area of the existing SEZ, qualifies the minimum area requirement of another class of SEZ, The BOA may consider such proposal for conversion of SEZ from one class to another in case to case basis.

The SEZ Rules Provide that maximum area of a multi product SEZ would not exceed 5000 hectares. However, the Board of Approval may consider on merit, clubbing of contiguous existing notified SEZ even in case the total area of resultant SEZ after clubbing exceeds 5000 hectares.

Denotification of SEZ:

In Rule 8, it has been specifically provided that the BOA can consider the request for withdrawal from SEZ scheme or for rescinding the notification provided the Developer submits such application in FORM C-6 to the Development Commissioner, who is required to send his recommendation to BOA within 15 days.

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