



Tax Flash News

8 December 2023

Amendment to Special Economic Zones Rules, 2006 - Partial demarcation of Information Technology or Information Technology Enabled Services Special Economic Zone

The Ministry of Commerce and Industry has issued Notification dated 6 December 2023¹ and inserted Rule 11B in the Special Economic Zone Rules, 2006 to allow demarcation of a portion of the built-up area in an Information Technology or Information Technology Enabled Services Special Economic Zone as a Non-processing area, subject to conditions including repayment of tax concessions attributable to the area.

Gist of the amendment

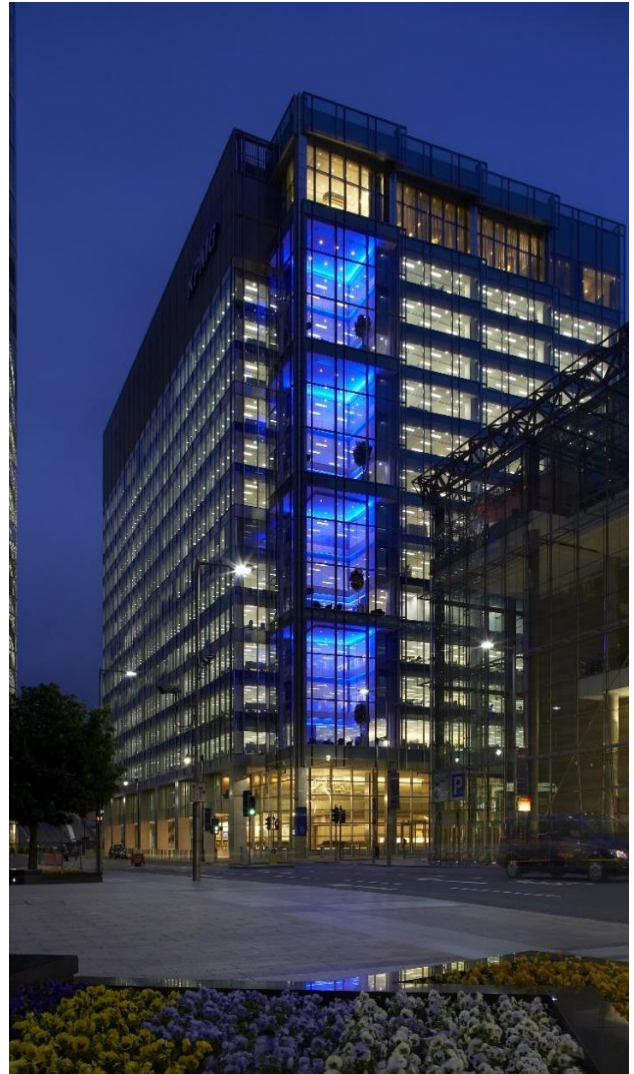
- The Board of Approval may permit demarcation of a portion of the built-up area of an Information Technology or Information Technology Enabled Services Special Economic Zone (IT/ITeS SEZ) as a “Non-processing area” on the request of an SEZ Developer
- Such permission may be granted, only after repayment of the following tax benefits (without interest) by the SEZ Developer based on a certificate issued by the Chartered Engineer:
 - a) Tax benefits attributable to the Non-processing area, calculated as the benefits provided for the processing area of the Special Economic Zone, 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, as specified by the Central Government
 - b) 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 units and business engaged in IT/ITeS in the Non-processing area
- Demarcation of a Non-processing area shall not be allowed if it results in decreasing the processing area to less than 50% of the total area or less than the minimum built-up processing areas specified for various categories of cities.
- A Non-processing area shall consist of the complete floor and may be used for setting up and operation of the businesses engaged in IT/ITeS at such terms and conditions as may be specified by the Board of Approval.
- Part of a floor shall not be demarcated as a Non-processing area.
- There shall be appropriate access control mechanisms for SEZ Unit and businesses engaged in IT/ITeS in the Non-processing areas of IT/ITeS SEZs to ensure adequate screening of movement of persons as well as goods in and out of their premises.
- The businesses engaged in IT/ITeS in a Non-processing area shall be subject to the provisions of all the Central Acts and rules and orders made thereunder, as are applicable to any other entity operating in domestic tariff area and shall not avail any rights or facilities available to SEZ Units

¹ Notification No. G.S.R. 881(E) dated 6 December 2023, Ministry of Commerce and Industry

- No tax benefits shall be available on operation and maintenance of common infrastructure and facilities of such an IT/ITeS SEZ.

Our comments

The amendment to SEZ Rules allowing demarcation of SEZ area on a floor-wise basis is a welcome move and will bring cheer to SEZ developers as vacant floors in the SEZs which were not fully occupied post COVID pandemic and due to the hybrid work model, can now be unlocked. Even Companies operating in IT/ITeS SEZs can now operate as DTA units in the same SEZ. Necessary guidelines/FAQs from the Ministry of Commerce on the procedural aspects is the need of the hour to implement this change in the true sense which can give impetus to boost the Indian real estate sector.



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