

Government issues clarification for facilitating demarcation of ‘non-processing area’ from SEZ area

Earlier, the Ministry of Commerce and Industry had amended the Special Economic Zones Rules, 2006 (SEZ Rules), for allowing the demarcation of non-processing areas in the information technology (IT) or information technology enabled services (ITeS) SEZs for businesses engaged in the IT/ITeS by introducing a new provision Rule 11B effective from 6 December 2023.

As a facilitative measure to resolve queries from various stakeholders regarding the implementation of this rule, the government has now issued a clarification through Instruction No. 115 dated 9 April 2024.

Key Clarifications:

Issues	Clarifications
At what rate the repayment of tax benefits is to be made?	As stipulated in Rule 11B(5) of the SEZ Rules, the repayment of <u>originally availed tax benefits</u> is a prerequisite for the demarcation of the NPA and obtaining approval. This will be sufficient to issue a no objection certificate (NOC).

Whether the chartered engineer (CE) valuation and certification for the built-up area shall be based on the cost of construction as booked in the financial books of the developer or based on the Central Public Works Department or Public Works Department (CPWD/PWD) rates?	The demarcated built-up area shall be certified by the CE. No valuation would be needed as tax benefits shall be certified based on financial books.
Whether any tax benefit for operation and maintenance (O&M) expenses of common infrastructure and facilities is available?	As per Rule 11B(9) of the SEZ Rules, the units will not get benefit of O&M of common infrastructure and facilities of an IT or ITES SEZ. The common infrastructure will include all infrastructure attributable for common use by both the units.

<p>Whether the cost of construction of basements of the building is also required to be included for the repayment of proportionate tax benefits on the NPA floor of the said building?</p>	<p>The tax benefits on the construction of the building, including the basement, should be considered for the repayment of tax benefits attributable to the demarcated NPA floor.</p>
<p>Whether repayment of tax benefits on plant and machinery (capital goods) in the stock will be at the depreciated value in terms of Rule 49 of the SEZ Rules?</p>	<p>Rule 49 of the SEZ Rules would be applicable for clearance of the plant and machinery pertaining to the built-up area of the non-processing area to the total built-up area of the processing area of the IT/ITeS SEZ.</p> <p>However, all the benefits are to be repaid for common social or commercial infrastructure (Rule 11B(5)(ii) of the SEZ Rules).</p>

<p>Whether post repayment and surrender of tax benefits on common built-up infrastructure and amenities such as cafeteria, hubs, etc., the said amenities can be used by the domestic tariff area (DTA)?</p>	<p>The infrastructure in the demarcated area will have the similar status as dual usage infrastructure allowed in the NPA and can be used subject to compliances of the SEZ Rules.</p>
<p>Whether the income tax benefits availed by the developers will also require to be reversed in order to obtain approval?</p>	<p>The tax benefits to be repaid includes customs duties, central excise duty, CGST, IGST and SGST and such other central levies and tax benefits.</p> <p><u>Repayment of benefits exclude income tax benefit, if any, availed earlier.</u></p>

Other aspects for consideration:

- IT/ITES units to be set up under Rule 11B of the SEZ Rules in the NPA of IT/ITES SEZ are not entitled for any right under the SEZ law and would be subject to GST or any other law, as are applicable. The compliance requirement for IT/ITES NPA units will be at par with the DTA units.

- The minimum built-up area processing requirement is being specified as per the category of cities. Pertinent to note that, such area cannot be less than 50% of the total area.
- In cases where the basements and other facilities are utilised exclusively by the SEZ units, and such **demarcation is feasible** and permissible as per the SEZ Rules, no repayment of availed benefits is mandated.
- There is no requirement to repay the benefits availed on O&M expenses, as Rule 11B(9) of the SEZ Rules is applicable prospectively.
- This rule is applicable for the demarcation of space in the existing built-up complete floor area irrespective of the location of building. Therefore, demarcation is not applicable for vacant land.
- For access control and movement of common employees, the units have to follow the mechanism to be specified by the unit approval committee, which would be issued after the analysis of the risk profile of each SEZ unit, and there would be no specific requirement for the scrutiny of goods procured by the units in NPA.
- The NPA cannot provide the facility of living area or housing for employees or guests.

The prescribed format for submission of the application is being appended to the instruction