

SEZ Hotline

June 01, 2006

WHERE DO YOU WANT TO GO - STP OR SEZ?

The recently constituted empowered group of ministers ("eGoM") has suggested to the Finance Ministry that the existing tax exemption available to a unit set up in a Software Technology Park ("STP") should be extended beyond 2009, when it is scheduled to expire, to bring it on par with the tax benefits available to a unit set up in a Special Economic Zone ("SEZ"). This suggestion was made to eGOM by the Prime Ministers Office ("PMO"), whose earlier suggestion of scraping the minimum land requirement for an Information Technology SEZ ("IT SEZ") has been accepted and is being implemented now.

Currently under section 10A of the Income Tax Act, 1961 ("ITA"), an STP unit can avail of a 10 year tax holiday on export profits, while under section 10AA of the ITA, an SEZ unit (including an IT unit set up in SEZ) can avail of a 15 year tax holiday on export profits, which is 100 per cent for the first five years, 50 per cent for the next five years, and up to 50 per cent for further five years, subject to creation of a SEZ Re-investment Reserve account. Further, section 10AA states that STP units, which have availed of a complete tax exemption under section 10A, cannot avail of any SEZ tax benefits. It is pertinent to note that the exemption available to an SEZ unit is open-ended and has no sunset clause as in the case of an STP unit.

Apart from the direct tax benefits, both STP and SEZ units enjoy similar indirect tax benefits such as exemption from excise, Value Added Tax ("VAT") and local state level taxes. However, an STP unit provides more locational flexibility as opposed to an SEZ unit, which needs to be located in an identified area designated as SEZ. The call for the extension of the tax exemptions for an STP unit comes in the wake of the fear that STP units may migrate to an SEZ, post 2009, when the exemption available to STP units is scheduled to expire. However, there is ambiguity on whether STP units will be allowed to migrate to an SEZ, and the same has to be clarified foremost in order to assess the benefits of the current proposal.

It seems that the proposed extension of tax benefits would be available only to "new" STP units and thus such a move would provide IT companies an opportunity of two different avenues with similar tax benefits to set up IT units. Thus, the PMO's suggestion, if implemented by the Finance Ministry, would open up more opportunities for the IT companies to set up their operations.

However, certain ambiguities remain in this proposal. The status of granting the SEZ tax holiday to the existing STP units, which by 2009 would not have availed of the full 10 year tax exemption, is not clear. Also, their status vis-à-vis the proposed extension of SEZ tax benefits to STP units, which seem to be made available only to "new" units, remains uncertain.

It remains to be seen whether the Finance Ministry accepts the proposal of eGOM of extending such SEZ benefits to STP units.

- Nishchal Joshipura & Nithya Reddy

Source:

- *The Economic Times (dated May 30, 2006)*
- *The Hindu Business Line (dated May 29, 2006)*

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

India's Oil & Gas Sector— at a Glance?

March 27, 2025

Artificial Intelligence in Healthcare

March 27, 2025

Real Estate Tokenisation

March 27, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

SIAC 2025 Rules: Key changes & Implications

February 18, 2025

How Cross Border M&A Will Shape the AI Age

February 13, 2025