

EY Flash News

Amendments to Special Economic Zone Rules, 2006

Work from Home permitted for IT/ITES SEZ units

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

The COVID-19 pandemic has shown that flexibility can work for both employees and employers, and flexible working is the new currency for attracting and retaining talent. Employers in the “new” and “next” normal will need to put hybrid working in the front and center of their talent strategy.

Keeping in view this demand of the stakeholders, the Ministry of Commerce and Industry (‘MOCI’) has, inserted new Rule 43A ‘Work from Home’^[1] in the SEZ Rules, 2006 (‘Rules’) and has given the much-awaited relief to India’s sunrise sector of Information Technology / Information Technology Enabled Services. The authorities have clarified the following aspects:

- ▶ Number of employees (including contractual employees) permitted to WFH capped at 50%; ability to take approval beyond 50% on a case-to-case basis
- ▶ Process for obtaining approval from the Development Commissioner
- ▶ WFH approval valid for 1 year and extensions to be obtained thereafter
- ▶ Compliance aspects to be followed by SEZ Units
- ▶ Assets that can be moved out of SEZ for WFH

The clarity on the above issues was essential, given the fact that different jurisdictional authorities were issuing varied guidelines. The notification from MOCI will enable a consistent WFH approach for SEZ Units across the country.

^[1] Notification No. G.S.R. 576(E) dated 14 July 2022

Background

- ▶ In the current business environment, specifically in the Information Technology ('IT')/ Information Technology Enabled Services ('ITES') sector, allowing employees to Work from home ('WFH') has become an essential business requirement for rendering services to the clients on a sustainable basis.
- ▶ To enable the above, various rules and regulations were introduced in the SEZ legislation from time to time.
- ▶ However, there was no clarity on the duration of the approval and threshold of the number of employees that were permitted to WFH since the instructions were issued by jurisdictional SEZ authorities and that too on a short-term basis.
- ▶ Given the above, the MOCI vide Notification No. G.S.R. 576(E) dated 14 July 2022 has inserted new Rule 43A 'Work from Home' for providing clarification on the aforesaid issues.

Salient features

1. Category of employees:

- ▶ The MOCI has clarified that the following employees (including contractual employees) would be eligible for WFH or work from any place outside SEZ:
 - ▶ Employees of IT and ITES SEZ Units;
 - ▶ Employees, who are temporarily incapacitated;
 - ▶ Employees, who are travelling; and
 - ▶ Employees, who are working offsite

2. Process for obtaining approval:

- ▶ SEZ Unit is required to submit its proposal to the Development Commissioner ('DC') through email or physical application highlighting the following:
 - ▶ Stating the terms and conditions of WFH;
 - ▶ Date from which WFH permission is required;
 - ▶ Details of employees for whom WFH permission is sought.
- ▶ The proposal shall be submitted at least 15 days in advance to the DC except in the case of employees who are temporarily incapacitated or travelling.
- ▶ For any Unit where the employees are already working from home as on the date of this notification, it shall submit its proposal with the DC within 90 days from the date of commencement of these rules.

3. Number of employees permitted to WFH:

- ▶ The permission granted by DC shall cover a maximum of 50% of the total employees including contractual employees of the Unit.

- ▶ The DC is empowered to approve a higher number of employees for WFH for any bonafide reason to be recorded in writing.

4. Duration of approval:

- ▶ The approval shall be granted for 1 year.
- ▶ The DC may further extend the approval for a period not exceeding 1 year at a time, subject to the compliance of this rule by the Unit and its employees.

5. Assets permitted to be taken out for WFH:

- ▶ Unit, with prior permission from Specified Officer ('SO'), is allowed to provide the following assets to its employees for enabling WFH, without any payment of duties and Integrated Goods and Services Tax till the duration of WFH approval:
 - ▶ Laptops;
 - ▶ Computers;
 - ▶ Video projection system(s);
 - ▶ Other electronic equipment; and
 - ▶ Secured connectivity (e.g. virtual private network, virtual desktop infrastructure) to establish a connection between the employee and work related to the project of the SEZ Unit

- ▶ Further, the Unit will be required to comply with the following conditions:

- ▶ Maintain records for the goods removed temporarily;
- ▶ Issue a certificate authorizing the employee by name and full specification of the equipment intended to be taken outside the SEZ. The copy of such certificate shall be endorsed by the SO.
- ▶ Maintain a record of the certificate of authorization issued for the removal of equipment

6. Other conditions:

- ▶ Unit shall maintain the accurate attendance record for the entire period of permission for WFH and submit the same with DC from time to time.
- ▶ The work to be performed by the employees shall be as per the services approved for the Unit, and the work related to a project of the Unit.
- ▶ Export revenue of the resultant products or services shall be accounted for by the Unit to which the employee is tagged.
- ▶ Employee shall be un-tagged from the Unit when such person ceases to be a part of the project and the identity card of the employee shall be surrendered by the Unit as per Rule 70(2) of the Rules.

Comments

- a. The amendment to SEZ rules for bringing in specific guidance on work from home is a welcome step and addresses the long-standing demand of the IT/ITES sector, which is dealing with the new digital work paradigm.
- b. While the amendment clarifies important aspects, such as duration and quantum of permissible work from home employees, it puts onerous responsibilities on the unit to maintain accurate attendance records and provide the same to the DC on a time-to-time basis.
- c. Another aspect that requires clarification is where Business Continuity guidelines are triggered, and all employees need to work from home — in such a situation whether Rule 43A will allow 100% of employees to WFH needs to be further clarified by the authorities.
- d. For SEZ units engaged in voice-based BPO services, work-from-home regulations under the Revised guidelines for Other Service Provider (OSP) are also applicable. Hence, for such units, conditions prescribed in the OSP guidelines would also need to be complied with.
- e. Rule 43A is a delicately balanced move, which considers the Developers and Units requirements and settles that WFH can be a model for delivering services from the SEZ's, while continuing to enjoy fiscal incentives.

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon
Temple, Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

Bengaluru

12th & 13th floor
"UB City", Canberra Block
No. 24, Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground Floor, 'A' wing

Divyasree Chambers
11, O'Shaughnessy Road
Langford Gardens
Bengaluru - 560 025
Tel: + 91 80 6727 5000

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

Tidel Park, 6th & 7th Floor
A Block, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Golf View Corporate Tower B
Sector 42, Sector Road
Gurugram - 122 002
Tel: + 91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jamshedpur

1st Floor, Shantiniketan Building,
Holding No. 1
SB Shop Area, Bistupur
Jamshedpur - 831 001
Tel: + 91 657 663 1000

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2

Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

Pune

C-401, 4th floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

Ernst & Young LLP

EY | Building a better working world

About EY

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at 22 Camac Street, 3rd Floor, Block C, Kolkata - 700016

© 2022 Ernst & Young LLP. Published in India.
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.



Download the EY India Tax Insights App

ey.com/en_in

[@EY_India](https://twitter.com/EY_India)

[in EY](https://www.linkedin.com/company/ey)

[YouTube EY India](https://www.youtube.com/channel/UCv3p08333333333333333333)

[f EY Careers India](https://www.facebook.com/EYCareersIndia)

[@ey_indiacareers](https://www.instagram.com/ey_indiacareers)