

# 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'<sup>[1]</sup> 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.

<sup>[1]</sup> 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.

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