

Enabling partnership for States

The Finance Minister has announced that the Special Economic Zones Act, 2005 (**SEZ Act**) will be replaced with a new legislation that will enable the States to become partners in 'Development of Enterprise and Service Hubs'. This will cover all existing and new industrial enclaves to optimally utilize available infrastructure and enhance competitiveness of exports.

Easing Customs Administration

Customs administration of SEZ's is expected to be fully IT driven & integrated with the Customs National Portal to eventually enable robust tech driven processes. This, hopefully, will reduce the processing time and eventually lead to a risk-based intervention system. This proposed facilitation is expected to go live by 30th September 2022 and mark yet another feather in India's Ease of Doing Business policy cap.

The Unchartered Territory

The Budget documents itself do not detail out the exact contours of the new SEZ law and therefore it is, currently unclear, on the exact manner in which the stated objective will be achieved in the new law.

While one awaits the actual text of the new legislation, it is perhaps useful to appreciate the background in which the new legislation has been proposed:

- The SEZ Act was introduced in 2005 to “provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for the matters connected therewith or incidental thereto”
- Since then, the Government has approved setting up of 425 SEZs and given in-principle clearance to 35 SEZs under the Act. However, as per Government estimates, only 268 of these are operational.

- The SEZ scheme was one of the five Indian export promotion initiatives which was held to be in violation of WTO's Subsidies and Countervailing Measures (**SCM**) agreement (reason being that the subsidies thereunder were linked to NFE earnings).
- The Baba Kalyani committee in its 2018 report recommended significant changes in the SEZ legislation. These included, recommending transformation of SEZs into Employment and Economic Enclaves (**3Es**), significant changes in both approval and operational requirements of SEZ units and separate rules for manufacturing and service SEZs.
- In terms of the sunset clause under the Income Tax Act, 1961, only those units that started production on or before June 10, 2020, would be granted a phased income-tax holiday for 15 years.
- With pandemic induced newer ways of conducting business, the existing regulatory framework of the SEZ law could be seen as restrictive and not conducive to the changing nature of conducting operations in many sectors.
- In a run up to the Budget, the bureaucrats indicated the possibility of a new simplified SEZ law. It was then indicated that if there is a unit in a SEZ dealing in the domestic market, it will behave like a domestic tariff area entity and if it is dealing in the international market, it will behave like a SEZ unit.
- If, there is a clear treatment of bringing supplies made by a SEZ unit at par with other domestic supplies, then this could possibly also clear existing ambiguities. One of these clarifications includes allowing payment in INR for domestic service supplies made by a SEZ unit to DTA.

It is expected that the new SEZ law would overhaul the existing SEZ policy, while keeping the above perspectives in mind.

ELP's Insights

It must be noted that the SEZ scheme was previously held violative of the WTO guiding principles only for goods trade. However, the current overhaul shall be applicable to both the goods as well as services trade.

While coverage of existing/operational units is emerging from the Budget Speech, it remains to be seen whether some provisions could or may also apply retroactively to overcome existing litigation and ambiguities. And if it does, it is anyone's case whether the impact would be favorable or otherwise.

Largely, the announcement is being welcomed by various constituents & players given that the current administrative organization of SEZs leads to duplication of compliances under a tedious framework.

Also, while contextual clarity shall unfold in due course, it would be interesting to note whether any convergence with schemes like bonded warehouse manufacturing etc. is also being aimed at.

Finally, industry has hitherto expressed displeasure on specific rules relating to use of real estate under aegis of SEZ law. Whether the new proposition would change that tenet remains to be seen.



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