

Selection of best suited scheme under Foreign Trade Policy and SEZ

Manoj Malpani CA, CMA



MAKE IN INDIA

How to Select best suited scheme?

The important criteria

- Export of goods or services
- Extent of Import Content in the finished goods
- Sales Mix
 - Domestic and Exports
 - Deemed Exports
 - Supplies to SEZ
- Procurement Mix
 - Domestic or Imports
 - Within State outside State

How to Select best suited scheme? The important criteria

- Capital Goods
 - Second Hand / New
 - Domestic Sourcing or Imports
 - On lease
- Income Tax Benefit.
- Proposed location of the Unit.
- Net Financial benefit under each of the scheme.

Scenario 1: Capital goods imports

Export Promotion Capital Goods Scheme (EPCG Scheme)

What is Capital goods???

- Means any plant and machinery, equipment or accessories for manufacture or production of goods or services required directly or indirectly
- Including for replacement, modernization, technological up gradation or expansion
- Packing machinery, refractories, refrigeration equipment's, power generating sets, machine tools, equipments for testing, R&D, quality and pollution control .
- Capital goods for use in mining, agriculture, aquaculture, animal husbandary, floriculture, horticulture, pisciculture, poultry etc.

EPCG Scheme

- Capital Goods, Spares & Accessories
 - No import duties (0% EPCG)
 - Export Obligation 6 times duty saved.
 - EO to be fulfilled in 6 yrs.
 - 50% EO in 3 yrs. and remaining in subsequent 3 yrs.
 - Capital goods includes spares, tools, jigs, fixtures, dies & Moulds.
 - Spares to the extent of 10% of the CIF value.
 - Imports under EPCG also for Capital goods to be imported under Project Imports notified by CBEC

EPCG Scheme

- Second Hand Capital goods are not permitted under EPCG.
- Actual user Condition till fulfillment of EO.
- Domestic Sourcing against Invalidation letter, EO shall be 10% less than the EO as stipulated for imported capital goods.
- Fulfillment through Exports of similar goods, over and above Average Export (past 3 Years)
- Royalty payments received in FCC & Foreign exchange received for R&D shall be counted towards EO fulfilment.

EPCG Scheme

- Fast Track Fulfillment of Export Obligation (75%) if made in half or less than half of the original EO period
- One time chance to regularize EO by discharging duties equivalent to duty saved on unfulfilled EO along with interest upto maximum duty amt. saved as mentioned.

EPCG Scheme - Procedure

- Application to be made to Regional Joint DGFT / DGFT in ANF -5A
- Nexus Certificate from Chartered Engineer
- Bond / Bank Guarantee for Registration at Port
- Installation within 6 Months of Imports
- Annual Return
- Re-Export of Machine allowed within 3 Years

EPCG Scheme - Procedure

- Redemptions on fulfillment of Export Obligation (EO)
- Application to be made to DGFT in Form ANF-5B
- Extension Provision for EO Period with Composition Fees.
- In case of Export Obligation (EO) shortfall, Duties and Interest in proportion to unfulfilled EO.
- Submission of EODC to Customs for release of Bond / BG given at the time of imports.

Post Export EPCG Scheme

Uncertainty in Future Exports...!!

- Import of capital goods with full payment of duties.
- BCD paid on the capital goods will be paid back to the exporter in form of freely transferrable duty credit scrip.
- Export Obligation is 85% of normal EO mentioned in the scheme.
- Duty remission in proportion of EO fulfilled.
- All other procedure remain same.

Scenario 2: Raw Material Import for Export Goods

Advance Authorisation Scheme
and / or
Duty Drawback

What is Raw Material / Components???

- **Raw Material**
 - Basic material needed for manufacture of goods, but still in raw, natural, unrefined or unmanufactured state and
 - For manufacture, any material or goods which are required for his manufacturing process, whether they have actually previously manufactured or are processed or still in a raw or natural state.
- **Components**
 - One of the parts of sub assembly or assembly of which manufactured product is made up.
 - It included an accessory or attachment to another component.

Advance Authorisation – Policy

- Duty free inputs which are physically incorporated in export product along with consumables consumed during manufacture.
- Duty free import of mandatory spares upto 10% of CIF value of imports.
- Option to apply as per SION norms or Adhoc norms
- Manufacturers or merchant exporters tied to supporting manufactures eligible .
- Duty exemption from BCD, CVD, SAD, ED & SHED cess, antidumping duties and Safe Guard duties.
- Actual user condition – not transferable even after fulfillment of export obligation, but can be used for manufacture of domestic goods either at his place or at job workers end.

Advance Authorisation – Policy

- Minimum Value addition of 15 %, while calculation CIF value of imports value of duty paid goods to be considered if drawback is envisaged.
- Value Addition = FOB Value of Exports – CIF Value of Imports and other inputs on which DBK is to be claimed) / CIF Value of Imports and other material on which DBK is to be claimed).
- Free of cost material can also be imported duty free.
- Provision for Annual advance authorization for star house category exporters upto 300% of FOB value of exports for the preceding years
- Provision for ARO / Invalidation letter for domestic procurements.
- Simultaneous benefit of duty drawback towards duty paid imported goods subject to such goods are incorporated in the authorization.
- Goods exported can be reimported in same form and regional authorities to be informed within one of such imports.

Advance Authorisation – Procedure

- Application in ANF-4A to the regional DGFT authorities
- Chartered engineer certification towards BOM if applied under Adhoc norms
- Norms committee at Delhi to approve the Ad hoc Norms.
- Applications can be filled at multiple DGFT locations where the plants are situated.
- Entitlement restricted to 300% of fob value of exports for the preceding financial year or 10 cr whichever is more, for further authorization value bank guarantee will be required.
- Ratified norms by norms committee to be valid for two years and can be used for other authorisations.

Advance Authorisation – Procedure

- Ratification of norms to be approve within 4 months or else norms as applied shall be treated as final for that specific authorization.
- Applicant to give undertaking to discharge duties along with interest incase norms are ratified to a lesser extent vis-a-vis applied.
- Representation possible if communicated before 4 months of communication by the norms committee.
- Merchant exporter to provide supporting manufacturers SSI/IEM to incorporate his name in the authorization.
- Amendments in export item and inputs permissible at regional authority and in case there is a change in wastage % the same has to be approved by norms committee.

Advance Authorisation – Procedure

- Exports of export product can take place before imported inputs are procured.
- Intermediate suppliers can also obtain advance authorization on the basis of ARO / invalidation letter.
- ARO / Invalidation letter to be issued with a specific name, description and quantity of items
- EOU and SEZ units to supply goods against advance authorization without invalidation for local procurement.
- Advance authorization to be issued with a specific port, but facility of TRA is permitted for import from other ports, recently TRA dispensed due to EDI registration.

Advance Authorisation – Procedure

- Facility of clubbing of authorisations if issued under same customs notification, but no further imports / exports are allowed on such authorisations.
- Enhancement in quantities of imports and exports is possible subject to no change in norms and value addition
- Validity of authorization for imports is 12 months whereas for exports is 18 months .
- Extension of the period is possible for further 6 months with a composition fee of 0.5% of the shortfall in EO.
- Within two months from the expiry period of authorization redemption application to be submitted .
- No Bank Guarantee for Manufacturer Exporter

Duty Remission Schemes

Duty Drawback / Refunds

- Refund / rebate of duties on imported, indigenous material and input services.
 - Customs And / OR Excise Duties
 - Service Tax on Input Services
- Method of obtaining Duty drawback are
 - All Industry Rate of Duty Drawback
 - Brand Rate of Duty Drawback

All Industry Duty Drawback

- Notified for export products by MOF on yearly basis after assessment of average incidence of Customs, Excise duties and service tax suffered.
- Usually AIR is a % of FOB value of exports, but in certain cases value caps are introduced to balance the benefits.
- Drawback classifications are also brought in line with the customs and excise classification of export products.
- Amounts are directly deposited in exporters bank account wherever EDI systems are in operation on the basis of amount as reflected in Shipping bills.

Brand Rate of Duty Drawback

- Refund of customs, excise and service tax actually suffered in the export product or related to output services.
- Rate to be fixed on the basis of duties paid on consumption of inputs along with evidence of payment proof.
- Application to be made to the jurisdictional commissioner within 3 months of date of "let export order"
- Period can be extended by another 3 Months by AC/DC on payment of requisite fee (equivalent to 1% of the FOB value of exports or Rs. 1000/-, whichever is less) and proper justification.
- Period can be extended by another 6 Months by commissioner on payment of requisite fee (equivalent to 2% of the FOB value or Rs. 2000/-, whichever is less) and proper justification.

Brand Rate of Duty Drawback

- Bill of Material along with wastage norms are certified by chartered engineer.
- Opening stock on the date of commencement date i.e 3 months prior to first exports along with receipts considered for the period are certified by CA/CMA
- On verification of the details, application is processed and brand rate is fixed and letter is issued towards the same which has to be submitted to respective customs authorities for refund.
- Drawback amount per shipping bill has to be more than Rs 500
- Provision of supplementary claim if approved claim is less than applied and applied is made within 3 months for revision.

Scenario 3: Considerable Raw Material and Capital Goods Import for Export Goods

Export Oriented Unit (EOU) / STPI
or
Special Economic Zone Unit (SEZ Unit)

EOU / STPI – Policy Matters

- Automatic approval for units in manufacturing goods & providing services and Units engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry etc.
- Approval of BOA for services such as Repairs, reconditioning, re-engineering other services other than R&D and IT and IT enabled services.
- Duty free import and indigenous capital goods, raw material, components, consumables and spares except restricted goods including second hand capital goods subject to approval.
- Procurement from outside the country, bonded warehouses, international exhibitions and domestic units.

EOU / STPI – Policy Matters

- Procurement and export of spares / components upto 5% of FOB value of exports.
- No income tax benefits
- To achieve Positive Net foreign exchange earning in a block of 5 years.
- Extension of LOP for further block of 5 years
- Commercial production to be started within 2 years of issue of LOP, extension granted on case to case basis
- Conversion of existing units into EOU scheme subject to minimum investment of 1 cr in plant and machinery and maximum of 50 cr or 50 cr exports under automatic route or else BOA.

EOU / STPI – Policy Matters

- DTA sale upto 50% of preceding exports of the preceding year with concessional excise duties subject to achievement of positive NFE and that to of similar goods.
- Advance DTA sale permission can be obtained by new units.
- Excise duties are equivalent to customs duties for domestic sales.
- Concessional excise duties 50% of BCD + CVD and ED cess.
- SAD exemption in case VAT is levied on domestic sales.
- Sales to deemed export categories are counted towards export performance, even though they are in INR.
- Exports can be through Merchant exports, subject to no benefits are availed under duty drawback.

EOU / STPI – Policy Matters

- All industry duty drawback benefits on procurement of indigenous goods.
- Refund of CST on inter state procurements.
- All in one B-17 bond to be executed with 5% bank guarantee for procurement of all goods, duty free exports, clearances to job workers. exemption for status holders.
- Pre authenticated procurement certificate and CT-3 certificate for units having three years of existence and having a good track record.
- Sub contracting is permissible for eou units sending goods to job worker, but reverse is not allowed. Sub contracting up to 50% of overall production of previous year, subject to annual permission.

EOU / STPI – Policy Matters

- Capital goods can be disposed of with payment of applicable duties after availing depreciation as per policy.
- Exit from EOU scheme is permissible at any time subject to payment of applicable duties on capital goods, closing stock raw material, components, WIP and finished goods.
- DTA sale permission can be obtained on quarterly, half yearly and yearly basis, validity is for 3 years from the entitlement date.
- Capital goods have to be installed in 1 year and raw material to be consumed in 3 years.
- CST to be obtained on quarterly basis only.
- All industry drawback to be obtained on quarterly or half yearly basis.

EOU / STPI – Policy Matters

Positive NFE = $A - B > 0$ where

- A :
 - FOB value of exports in FCC
 - value of supplies against AAC/DFIAC/EPCG / notified Projects
 - Value of supplies against EOU/EHTP/STPI/BTP/SEZ units.
 - Value of supplies of ITA products & notified zero duty telecom or electronic items
 - Value of supplies made to DTA units against F.E earned .
 - Value of supplies made to FT&W zone units against FFE.

- B :
 - CIF value of all imported inputs used including purchases on high sea sales.
 - value of all payments made in F.E on export commission, royalty, fees, dividends, interest on ECB etc.
 - Value of purchases from EOU/EHTP/STPI/BTP/SEZ units.
 - Notional Value of goods imported duty free on lease basis, free of cost, loan basis , temporary basis.

Special Economic Zone

Special Economic Zone (SEZ)

Income Tax Benefits (Subject to MAT wef 1st April 2012)

SEZ Developer

- Income Tax Exemption for a block of 10 years in 15 years on Export Income (Section 80-IAB)

SEZ Unit

- Income Tax Exemption for a period of 15 years on Export Income as follows : (Section 10-AA)
 - 100% IT exemption for 1st 5 years
 - 50% IT exemption for next 5 years
 - 50% IT exemption of the ploughed back export profit for next 5 years

Subject to :

- It has commenced manufacturing on or after 1st April 2006 in SEZ
- It is not formed by splitting up or reconstruction of a business already in existence.
- It is not formed by transfer to a new business of machinery or plant previously used for any purpose

Special Economic Zone (SEZ)

Indirect Tax Benefit

- Exemption from Custom Duties
- Exemption from Excise Duties
- Exemption from Service Tax
- Exemption from Central Sales Tax
- Exemption from VAT & other levies as extended by the respective State Govt.

Special Economic Zone (SEZ)

- Exports Benefits – All Industry Duty Drawback

Subject to payment being made in FCC in case of SEZ Units, Developers payment can be in INR.

- Exports Benefits – Advance Authorization / Duty Free Import Authorization / Brand Rate Duty Drawback

The above condition of payment to be made in FCC not applicable.

Special Economic Zone (SEZ)

Positive NFE = $A - B > 0$ where

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 - Value of supplies against EOU/EHTP/STPI/BTP/SEZ units.
 - Value of supplies of ITA products & notified zero duty telecom or electronic items
 - Value of supplies made to DTA units against F.E earned .
 - Value of supplies made to FT&W zone units against FFE.
- B :
 - CIF value of all imported inputs used for authorised operations including purchases on high sea sales.
 - value of all payments made in F.E on export commission, royalty, fees, dividends, interest on ECB etc.
 - Value of purchases from EOU/EHTP/STPI/BTP/SEZ units.
 - Notional Value of goods imported duty free on lease basis, free of cost, loan basis , temporary basis

UNNOTICED IRREGULARITIES - EPCG

- **EXPORT PROMOTION CAPITAL GOODS SCHEME – UNFULFILLED EXPORT OBLIGATION**
 - Installation Certificate and yearly report mandatory requirement
 - Block wise export obligation to be fulfilled along with average export obligation.
 - On shortfall, demand of duty, interest and penalty.
 - Year wise export performance vis-à-vis export obligation get unnoticed and unreported and therefore liability is not provided.

UNNOTICED IRREGULARITIES – Advance Authorisaion

- **ADVANCE AUTHORIZATION FOR PHYSICAL EXPORTS AND DEEMED EXPORTS**
 - Adhoc Norms and ratification thereof, vis-à-vis actuals
 - Quantity imported vis-à-vis quantity exported in a year / Excess imports or short exports and treatment in the books of accounts.
 - Violation of actual user condition
 - Short consumption vis-à-vis SION and treatment thereof in the books of accounts.
 - Process of redemption and monitoring of open authorizations / licenses.

UNNOTICED IRREGULARITIES - EOU

- Conditions of notification for duty free import / indigenous procurement
- Domestic Tariff Area Sale entitlement
- Wastage Norms
- Installation of capital goods
- Non moving stock – more than 3 years
- Subcontracting and fulfillments of its condition
- NFE
- Separate books of accounts including bank accounts
- Cenvat
- ER-2 Returns reconciliation with books of account

UNNOTICED IRREGULARITIES - SEZ

- **SEZ :**
 - Authorized operations and procurement of goods and services
 - Returnable goods
 - Disposal to Domestic Tariff Area and rate of duties thereof
 - Service tax exemption vis-à-vis Exemption by way of refund

- **GENERAL (FOR INTERNAL AUDIT AND CONTROL) :**
 - Export documentation, pre and post export formality.
 - Proof of Export
 - Bank Realization Certificate
 - Recognition Status



Manoj Malpani CA, CMA

Contact : +91 99700 61039

manoj.malpani@bizsolindia.com