

EXPORT ORIENTED UNIT(EOU) FAQs

(GENERAL)

Q-1. What are EOUs? Where are the legal provisions for EOUs found?

Export Oriented Units (EOUs) have been defined under the Foreign Trade Policy (FTP) as those units undertaking to export their entire production of goods and services [except permissible sales in Domestic Tariff Area (DTA) for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under the EOU.

The legal provisions for EOUs are given in Chapter 6 of the Foreign Trade Policy (FTP), Chapter 6 of Handbook of Procedures (Vol 1), Appendix 6 and Aayat Niryat Forms (ANF) 6. Any amendments to these provisions are notified by the office of DGFT through notifications, public notices, circulars etc.

Q-2. What are the objectives of the EOU Scheme?

Ans. The objectives of the EOU Scheme are to promote exports, enhance foreign exchange earnings, attract investment for export production and employment generation.

Q-3 What are the application procedures and approvals required for setting up of an EOU?

Ans. An application for setting up an EOU needs to be made in ANF 6A (in triplicate) to the office of the DC. Apart from the application fee of Rs 5000/- (demand draft), some of the other documents required are the Certificate of Incorporation, Articles of Association (AOA), Partnership Deed as the case may be, existing and proposed capital structure, would need to be submitted.

Application for setting up of EOU shall be approved or rejected by Unit Approval Committee (UAC) within 15 days, as per the criteria specified in appendix 6A

On approval, a Letter of Permission (LoP) is issued by Development Commissioner of the Special Economic Zone (SEZ) under whose administrative control the EOUs comes. The validity of LoP is for a period of 5 years (excluding the period of 2 years for commencement of production). The LoP would be construed as an Authorisation for all purposes.

Q-4: What are the conditions including export criteria to be met for EOUs?

An EOU shall execute a Legal Undertaking (LUT) with the DC. It has to account for the utilisation of inputs as per the Standard Input Output Norms (SION). However, where there is

no SION, the norms for waste, scrap and remnants would be 2%. The export proceeds have to be realized within nine months

It has to ensure a positive Net Foreign Exchange (NFE) which is computed as per the following formula.

$NFE = (A-B)$ where

A is the sum of physical exports in free foreign exchange and deemed exports (as per para 6.09 of FTP)

B is the sum of the imported and domestic procured raw materials and consumables along with the amortised value (10% per year over a 10-year period) of the capital goods and foreign technical know-how fees

The failure to ensure positive NFE or to abide by any of the terms and conditions of LoP/ Industrial Licence (IL) / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law / rules and cancellation or revocation of LoP.

Q-5. What is the eligibility for setting up an EOU?

Ans. Only projects having a minimum investment of Rs.1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in Handicrafts /Agriculture/ Floriculture/Aquaculture/Animal Husbandry/Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criterion.

Q-6. What are the entitlements for supplies from the Domestic Tariff Area (DTA) to EOU?

Ans. Supplies from DTA to EOU units for use in their manufacture for exports will be eligible for benefits of deemed exports under Chapter 7 of FTP. DTA supplier shall be eligible for relevant entitlements under Chapter 7 of FTP, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under.

(Suppliers of precious and semi-precious stones, synthetic stones and processed pearls from DTA to EOU shall be eligible for grant of Replenishment Authorisations at rates and for items mentioned in HBP.

Other entitlements of EOU units are as under:

- (a) Exemption from industrial licensing for manufacture of items reserved for SSI sector.
- (b) Units will be allowed to retain 100% of its export earnings in the Exchange Earner's Foreign Currency (EEFC) account.
- (c) Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, where:
 - (i) The unit has turnover of Rs.5 crore or above;

(ii) The unit is in existence for at least three years; and

(iii) The unit:

(1) has achieved positive NFE / export obligation wherever applicable;

(2) has not been issued a show cause notice or a confirmed demand, during the preceding 3 years, on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made there under, on account of fraud / collusion / wilful misstatement / suppression of facts or contravention of any of the provisions thereof;

(d) 100% Foreign Direct Investment (FDI) investment permitted through automatic route.

Q-7. Can infrastructural facilities be shared among EOUs?

Ans. Yes, the Units Approval Committee may consider on a case-to-case basis request for sharing of infrastructural facilities among EOUs and it shall forward its recommendation to the Board of Approval for its consideration. While accepting such proposals, the NFE obligations of the units shall not be altered. However, sharing of facilities between EOUs and SEZ units shall not be permitted

Q-8. Can second hand goods be imported by EOUs?

Ans. Second hand capital goods, without any age limit, may also be imported with or without payment of duty/ taxes (as provided under Para 6.01(d) (ii) of the FTP)

Q-9. What are the guidelines for monitoring the performance of EOU Units?

Ans. 1. The annual review of performance of each operational unit and its compliance with the conditions of approval shall be undertaken by the Development Commissioner before the end of the first quarter of the following financial year;

2. A summary of annual performance review will be sent by each Development Commissioner to the Ministry of Commerce for information under the three formats indicated below latest by 30th September every year;

Proforma I: Comparative statement of performance and monitoring as compared to previous year;

Proforma II: Summary of annual performance of the EOU units, sector – wise with sectoral sub – totals.

Proforma III: Unit-wise statement on Net Foreign Exchange (NFE) showing the result of review.

Q-10. What are the differences between Special Economic Zones (SEZs) and Export Oriented Units (EOUs)?

Ans. Although both EOUs and SEZs, were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore, a foreign territory. Thus, any sale made from within an SEZ to DTA is considered export while any sale made by an EOU to DTA is regarded as deemed exports. Sale from SEZs to DTAs are more common, compared to sales from EOUs to DTAs.

Being a clearly demarcated area, there is substantial control over the physical movement of goods to and from SEZs, but the same cannot be said about EOUs. In terms of taxability, an SEZ based establishment is not required to pay tax, while an EOU has to pay tax which it can claim as a refund later.

Minimum investment in plant and machinery and building is Rs 1 crore for EOU. This should be before commencement of commercial production, there is no such limit for SEZ

Q-11. How can an EOU Exit from the EOU Scheme?

(a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/CGST/SGST/UTGST and compensation cess, if any, and industrial policy in force.

(b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by Department of Commerce (DoC), at price to be determined by that agency.

(d) An EOU unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing Export Promotion Capital Goods (EPCG) Scheme for DTA Units. This will be subject to fulfilment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

(e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs authorities. On the basis of "No Dues Certificate" so issued by the Customs authorities, unit shall apply to DC for final exit. In case there is no proceeding pending under The Foreign Trade (Development and Regulation) Act, as amended, DC shall issue final exit order within a period of 7 working days. Between "No Dues Certificate" issued by Customs authorities and final exit order by DC, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorisation / Duty Free Import Authorization (DFIA) / Duty Drawback. Since the duty calculations and dues are disputed and take a long time, a Bank Guarantee (BG) / Bond / Instalment processes backed by BG shall be provided for expediting the exit process.

(f) In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty/GST, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after exit would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged customs duty on capital goods at the time of removal of such capital goods in DTA when exit.

(g) An EOU unit may also be permitted by DC to exit under Advance Authorisation as one-time option. This will be subject to fulfilment of positive NFE criteria.

(GST)

Q12. Whether the EOU scheme will continue to be in operation in the GST regime and whether EOU is required to take registration under the GST law?

Ans. EOU is like any other supplier under GST and all the provisions of the GST Law will apply. However, the benefit of Basic Customs Duty exemption on imports will continue.

Q13. What tax benefits will be available to EOU scheme in GST regime?

Ans. The duty free imports under GST regime will be restricted to Basic Custom duty. Exemption from the additional duties of Customs, if any under Section 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 and exemption from Central Excise duty will be available for goods specified under the Fourth Schedule to the Central Excise Act. IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible, like any other registered person, to take Input Tax Credit of the said GST paid by its suppliers.

Q14. Whether supplies to or from EOU will be exempted from GST?

Ans. No, under the GST law, IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible to take Input Tax Credit of the said GST paid by its suppliers.

The supplies from EOU will not be exempted from GST, except in the case of zero rated supplies defined under section 16 of the IGST Act, i.e. Supplies made by EOU in the form of physical export or supplies to a SEZ unit or SEZ Developer for authorized operations.

Q15. What procedure will be followed by EOU to import goods without payment of Customs duty in the GST regime?

Ans. To avail such import benefits, EOUs will have to follow the procedure under the Customs (Import of Goods and Concessional Rate of Duty) Rules, 2017.

Q16. Whether an EOU can clear goods to another EOU (Inter-unit transfer)? And whether an EOU can send goods for carrying out job work on such goods? In such situations, how will the tax liability be discharged?

Ans. Supply of goods from one EOU to another EOU will be treated as any other supply under GST Law. An EOU can send goods for job work as per section 143 of the CGST Act, 2017 and rule 45 of the CGST Rules, 2017 and the tax liability shall be discharged accordingly.