

**No. F .1/6/2006-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Section)**

Udyog Bhavan, New Delhi
Dated 12th October 2007

To

The Development Commissioner SEZ & Chairperson, Approval Committee
(All Special Economic Zones)

Subject : Amendment to SEZ Rules, 2006—Units proposing to procure Second Hand Capital Goods –reg.

Sir/Madam,

As you are aware, apprehensions had been expressed by the Department of Revenue regarding shifting of existing businesses to SEZs to avail of the direct tax exemption on the export income as per the provisions of Section 10AA of the Income Tax Act, 1961. Accordingly in August 2006, vide SEZ (First Amendment) Rules, 2006, Rule 18(4)(g) had been inserted which prohibited consideration of any proposals intending to use any Capital Goods which have been previously used in the DTA.

2. Now vide Section 7 of the Finance Act, 2007, Section 10AA of the Income Tax Act has been amended and subsection (4) of Section 10AA has been substituted as below:

“(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:

- (i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;*
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence:*

Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

- (iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.*

Explanation: The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.”

Relevant extract from Section 80IA referred to in the new subsection are as below:

Explanations to sub-section (3) of Section 80 IA :

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :—

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—**Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.**

3. As the provisions of Rule 18(4)(g) and the new sub-section (4) to Section 10AA were in conflict, vide SEZ(Second Amendment) Rules, 2007 dated 12th October, 2007, Rule 18(4)(g) has been deleted.

4. While adequate provisions exist in Section 10AA of the Income Tax Act, 1961 to deal with tax related issues in case of previously used Capital Goods, it is not intended that any shifting of existing businesses takes place to SEZs which would offer a comparatively superior infrastructural and procedural environment. Accordingly, in terms of the provisions of sub-section (8) of Section 15 of the Special Economic Zones Act, 2005 , it is hereby prescribed that while granting any approval for setting up new units in any SEZ, the Approval Committee or the Development Commissioner, as the case may be, shall ensure that procurement of second hand capital goods shall be allowed only in terms of the provisions of sub-section (4) of Section 10AA read with Explanation 1 & 2 to sub-section (3) of Section 80 IA of the Income Tax Act ,1961.

5. Receipt of this instruction may kindly be acknowledged. Contents of this instruction may be brought to notice of all the members of the Approval Committee.

Yours faithfully,

**(Yogendra Garg)
Director SEZ**

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1. PS to Commerce & Industries Minister
2. All Members of the Board of Approval
3. DG, EPC for EOUs & SEZ Units
4. SEZ website

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