

**F.No.H.4/3/2009-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
Udyog Bhawan, New Delhi**

Dated the 2nd July 2009

INSTRUCTION NO. 18

OFFICE MEMORANDUM

Sub: Guidelines regarding the transactions related to SEZs consequent upon amendment to Section 3 of the Indian Stamp Act 1899 through Section 57 of the SEZ Act, 2005.

The undersigned is directed to enclose herewith guidelines regarding transactions related to SEZs consequent upon amendment to Section 3 of the Indian Stamp Act 1899 through Section 57 of the SEZ Act, 2005, for information and necessary action of all concerned.

2. This issues after due consultation with Department of Revenue.

**(T. Srinidhi)
Director**

**Department of Commerce
(SEZ Section)**

Subject: Guidelines regarding the transactions related to SEZs consequent upon amendment to Section 3 of the Indian Stamp Act 1899 through Section 57 of the SEZ Act, 2005.

The Indian Stamp Act, 1899 as amended through Section 57 of the SEZ Act 2005 includes in proviso (3) to Section 3 that no duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Developer or Unit or in connection with the carrying out of purposes of the Special Economic Zone.

2. Consequent upon this amendment to the Indian Stamp Act 1899, clarifications have been sought by the States, regarding treatment of certain transactions related to SEZ for the purpose of application of Stamp duty.

3. The issues raised have been examined in the Department of Commerce and the following guidelines are issued in this regard.

(i) Whether exemption or refund of stamp duty can be given in respect of purchase of land by the Developer for the purpose of setting up of a SEZ, even if eventually no SEZ is set up?

Clarification:- There are 3 stages of approvals for setting up an SEZ. The Ministry of Commerce & Industry (MOCI) first issues an in-principle approval, thereafter a formal approval and finally the SEZ notification. The full land has to be purchased and be in the possession of the developer before the

This document has been compiled as service to our clients. We recommend that you seek professional advise prior to initiating action on specific issues.

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MOCI issues the SEZ notification. For the purchase of the land after the formal approval (which will be after the in-principle approval, but before the SEZ notification), the State Governments are expected to give full exemption of stamp duty as provided for in the SEZ Act. For the purpose of land before the formal approval, but after the in-principle approval, the State Government may either give the exemption of stamp duty up front (subject to final setting up of the SEZ) or insist that the developer pay the stamp duty but refund the same after the formal SEZ notification is issued. For the purpose of land even before the in-principle approval, the potential developer has to pay the stamp duty up front, but it may be refunded by the State Government after the SEZ notification is issued. In all cases, if the SEZ is not actually commissioned within the time indicated by the MOCI in the approval, or if the SEZ notification is cancelled, the State Governments will be entitled to withdraw the concession of stamp duty and recover the same from the developer.

(ii) Whether stamp duty will be payable in respect of purchase of land by the Developer for activities ancillary to the SEZ, e.g. housing, hotel, recreation, entertainment, golf, etc.?

Clarification:- The facility of exemption from stamp duty on purchase of land by the SEZ developer for activities like housing, hostel, recreation, entertainment, golf etc. would be available only with respect to the land which falls within the SEZ area. Any facility falling outside the SEZ area will not be eligible for exemption from stamp duty.

(iii) Whether stamp duty would be payable in respect of sale or conveyance of the land developed by the Developer only to the units in the SEZ or to any other person or entity as well?

Clarification:- Land, buildings, etc. falling outside the notified SEZ will not be eligible for exemption from stamp duty. Also, under the rules governing SEZ, sale of SEZ land to units or other persons or entities is not allowed. Similarly, conveyance of land, buildings, premises, etc. by lease or otherwise (but not by sale) in an SEZ can be made only to the units in the SEZ or entities permitted to carry out operations within the SEZ areas as per SEZ Rules. In such cases above, the concession of stamp duty exemption will be allowed. Other persons or entities will not be eligible for concession.

(iv) Whether stamp duty would be payable in respect of purchase or sale of land, buildings, etc. by the Developer at a place outside the SEZ?

Clarification:-The facility of exemption of stamp duty to a Developer will not be available for purchase or sale of any land or building at a place outside the notified SEZ.

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