

Tax and regulatory aspects for IT/ITeS companies in SEZ

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Work from home – the ‘new normal’

The pandemic has made work from home (WFH) inevitable. Several companies are now evaluating whether WFH environment is possible in the medium to long term. There are undoubtedly significant benefits of WFH but several factors need to be considered

in these decisions. Furthermore, for units in Special Economic Zones (SEZ) in India, which are highly regulated, it is extremely important to keep in mind various tax and regulatory requirements as they evaluate the concept of WFH.

Some of the relevant questions that companies with SEZ unit/s would need to consider:

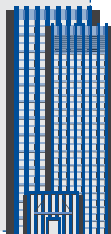
- Whether it is possible to WFH for extended period of time?
- Would there be a limit on what percentage of workforce can WFH?
- Indirect tax and regulatory implications on assets taken out for WFH or procured outside SEZ?
- Can companies surrender SEZ space partially/ fully in the light of overall WFH scenario?
- What are the permissions to be obtained for this and would this be allowed?
- What does WFH mean for Net Foreign Exchange (NFE) obligations and duty waivers?
- What are the direct tax implications for WFH?
 - Tax holiday under section 10AA
 - Payroll components and its taxability.
- What are the DoT OSP guidelines on WFH?
 - PPVPN/VPN solution as provided by an authorised TSP
 - WFH agreement with the relevant DoT office along with submission of a bank guarantee



KPMG in India's holistic offerings for SEZ WFH

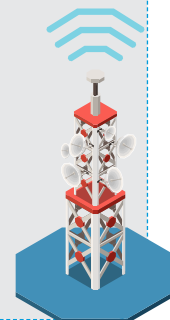
1. SEZ regulations

- Advising and assisting in seeking approvals for temporary removal of desktops/laptops for authorised operations by regular employees
- Advising on the conditions associated with removal of assets out of SEZ – proper tagging, tracking usage, secured connectivity, etc.
- Assistance in seeking specific approvals for reducing the infrastructure space or exiting the SEZ, as required
- Assisting in seeking clarification on continuing WFH by SEZ units post COVID-19.



2. OSP regulations

- Advising and assisting in application and network diagram preparation/submission to respective DoT office for WFH
- Assisting in seeking approvals from respective DoT office for WFH application
- Advising and assisting in end to end OSP compliance process (new registrations, annual returns, change management etc.)
- Assisting in seeking clarification on continuing WFH from the DoT post COVID-19.



3. Indirect tax

- Advise on the impact of WFH model on tax benefits/exemption being enjoyed by units. This would include evaluation of:
 - a. Removal of assets – with intimation to the offices for prescribed time period
 - b. Eligibility of exemption or input credit on goods/services delivered directly at employee residence (outside SEZ)
 - c. Tracking usage of goods/services for authorised operations
 - d. Any unapproved delays in bringing back the assets into SEZ, may lead to duty payments along with interest and penalties.
- Advise on the possible structuring of supply chain to achieve tax efficiencies.



4. Direct tax

- Assistance in evaluating the eligibility of the SEZ unit to claim section 10AA benefit, in case of WFH
- Assistance in maintaining robust documentation to establish that delivery of the service/product is from authorised channel
- Assistance in reviewing existing compensation components in light of WFH and restructuring the compensation plan for WFH employees
- Assistance in re-evaluating the position on switching to new income-tax regime [Taxation Laws (Amendment) Ordinance, 2019] with lower rate, in the light of new scenario, e.g. in case of exit from SEZ
- Assistance in undertaking scenario-based detailed cost – benefit/impact analysis for WFH and surrender of space in SEZ.



5. Seeking clarifications/representation

- Assistance in representing before the government/ministries/policy makers to seek clarifications on various critical aspects
- Request on uniform application of relaxations and procedures across all SEZs
- Representing before the Finance Ministry to consider additional relaxations/extensions in return of WFH assets beyond the prescribed timelines.



KPMG in India contacts

Rajeev Dimri

National Head of Tax

T: +91 124 307 4077

E: rajeevdimri@kpmg.com

Ajay Mehra

Partner and Head

Tax Markets and Strategy

T: +91 22 3090 2701

E: ajaymehra@kpmg.com

Himanshu Parekh

Partner and Head

Corporate and International Tax

T: +91 22 3090 2680

E: himanshuparekh@kpmg.com

Sachin Menon

Partner and Head

IDT

T: +91 22 3090 2682

E: sachinmenon@kpmg.com

Rohan Padhi

Executive Director

Advisory

T: +91 22 3989 6000

E: rohanpadhi@kpmg.com

home.kpmg/in

#KPMGjosh

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KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.

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