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**Digest**  
An attempt to share knowledge

By

**Interns of  
SBS and Company LLP**

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**SEZ****APR OF A MANUFACTURING SEZ**

Contributed by Prudhvi Raj G &amp; Vetted by CA Sandeep Das |

**I. Introduction**

As per Rule 22 of the Special Economic Zone Rules, 2006 ("Rules"), the SEZ unit has to prepare a report showing SEZ unit post commencement of production and submit the same to the Development Commissioner who shall place the same before the Approval Committee for consideration. The preparation of Annual Performance Report (APR) has to be done independently by each SEZ unit located in SEZ area. An APR, which has to be duly certified by an independent Chartered Accountant [[i]], has to be filed with the Development Commissioner of the subject unit, who shall place the same before the Approval Committee for consideration [[ii]]. The Approval Committee does annual review of the performance of every unit and the compliance with the conditions of approval on the basis of the APR.

**II. Due date of filing / submission of the APR**

The APR must be duly Certified by a Chartered Accountant and must be submitted to the particular SEZ Additional development commissioner within 180 days from the end of the Financial Year ("FY") in which commercial production of the unit has been initiated and every year thereafter. The form for the same is, Form-I (format enclosed as Annexure – A). The form has been prescribed by the Rules issued under the SEZ Act.

**III. Purpose of APR**

The basic purpose of the APR is to identify the annual performance of the SEZ unit using the net foreign exchange earnings in a specified period by the SEZ unit.

**IV. Net Foreign Exchange Earnings:**

The Net Foreign Exchange Earnings ("NFE") earned by a SEZ unit has to be computed using the following formula:

$$\text{Net foreign Exchange earnings} = \text{Inflow of foreign exchange (A)} - \text{Outflow of Foreign exchange (B)}$$

**V. Units which would fall within the purview of monitoring**

The units which would fall within the purview of monitoring (by the Approval Committee) are as follows:

- ❖ In case a unit has not completed 5 years from the date of commencement of production, it will be monitored for the completed years;
- ❖ Annual monitoring in the case of old units which have completed more than 5 years will be undertaken only for such years which fall in the subsequent block of 5 years.
- ❖ It is pertinent to note that units which have not completed one year of operation from the date of commencement of production will not be monitored.

## VI. Criteria for annual monitoring

Units with negative NFE in the 1st and 2nd year of commercial operations shall be placed under the Watch List to assess their performance.

If a unit continues to have a negative NFE by the end of 3rd year, a Show Cause Notice will be issued by Additional Development commissioner.

If the negative performance continues till the end of 5th year, the Development Commissioner shall initiate penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

## VII. Penal provisions

As stated above, if the negative performance continues till the end of 5th year, the Development Commissioner shall initiate penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

Any SEZ unit, while undertaking the Bond-Cum-Legal Undertaking ("BLUT") (format prescribed in Form-H of the Rules) undertakes that in case of any default in filing the APR within the prescribed time limit or in case of wrong submission, the permission granted for the prescribed operations may be withdrawn and / or the permission for further imports and sales in the Domestic Tariff Area ("DTA") may be stopped.

**NOTE :**Unit having Multiple Licences are required to file the APR separately for each licence under the Jurisdiction.

### ***FORM For FILLING THE ANNUAL PERFORMANCE REPORT FOR SEZ UNITS (Rule 22)***

#### **FORM-I**

## **VIII. DOCUMENTS REQUIRED FOR PREPARATION OF ANNUAL PERFORMANCE REPORT (APR):**

### **A. EXPORTS**

1. Details of all exports done during the year (including capital goods, raw materials, consumables, etc). This should include the segregation of the cost of goods i. e, FOB value, insurance and freight.
2. Supporting documents for the exports i. e, Bill of lading, invoices etc
3. Cumulative value of exports for the last 5 years period.

**B. IMPORTS**

4. Details of all Imports done during the year (including raw materials, consumable, packing materials, components etc). This should include the segregation of the cost of goods i. e, CIF value and other associated costs.
5. Supporting documents for the imports i. e, Bill of entry, invoices etc
6. Opening and closing balance of imported goods (including capital goods, raw materials, consumables, packing materials, components etc) of Previous Financial Year ("FY")
7. Cumulative value and details of capital goods imported (including spares) from the inception of the enterprise till the Previous Financial year (i. e, FY 2016-17)
8. Amount of imported raw materials, consumables, packing materials, components, capital goods etc., transferred to / from any SEZ / Export Oriented Units (EOUs) / Software Technology Parks (STPs) / Electronics Hardware Technology Parks (EHTPs)

**C. OTHERS**

9. Downloaded records from SEZ online portal. This would require records of imports, exports, DTA purchases and DTA sales
10. Details of DTA (local) purchases of capital goods, raw materials, consumable, packing materials, components etc
11. Domestic Tariff Area (DTA) sales including sale of scrap, by-product etc
12. Share allotment details of the enterprise
13. Records of overseas investment
14. Employment record - The list should also contain the gender of the employee and should contain the following bifurcations:
  - a. List of employees hired directly by the enterprise
  - b. List of employees hired on contract basis
15. Soft copy of FAR register as on 31st March of the Financial Year for which APR is being prepared
16. Trial Balance for the period.
17. Balance Sheet as on Close of the Financial Year
18. Soft copies of all Bond Cum Letter of Under Takings (BLUT) executed till date
19. Soft copies of all Letter of Approval (LOA) issued by the Development Commissioner
20. List and details of External Commercial Borrowings (ECBs) pending at the end of the previous year.
21. Details of any outflow of foreign exchange during the year in the form of royalty, technical know-how fee, repatriation of dividend / profits, payment of sales commission, interest on overseas borrowings, etc
22. Any cases pending for foreign exchange realization.
23. List of Form I issued under the Central Sales Tax Act, 1956 (April'17 to June'17)
24. Soft copies of Sales Tax Returns & VAT Returns (April'17 to June'17)

*This article is contributed by Prudhvi Raj G , Intern of SBS and Company LLP. The author can be reached at [interns@sbsandco.com](mailto:interns@sbsandco.com)*

GST

**PLACE OF SUPPLY OF GOODS**

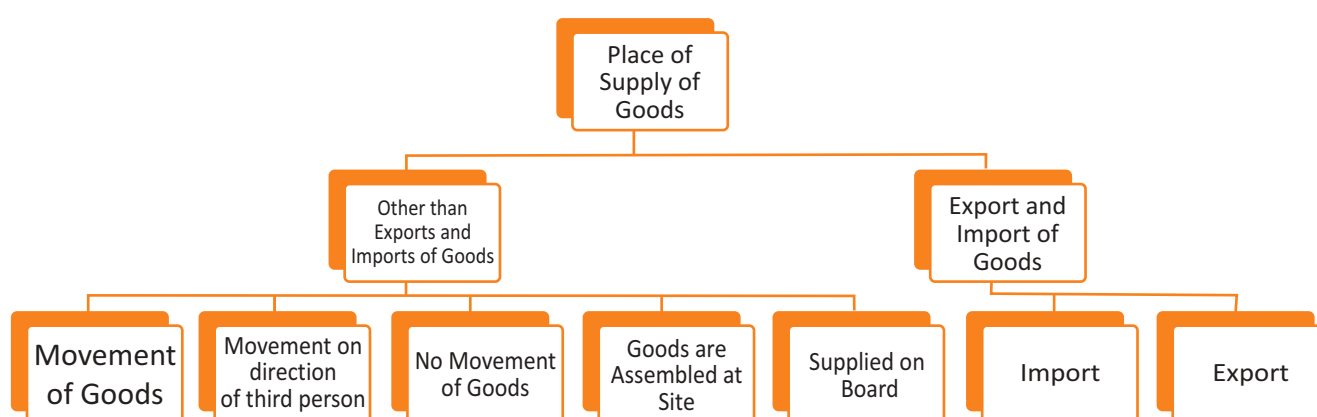
Contributed by Bharadwaja & Vetted by CA Manindar K

The place of supply provisions determines whether the supply transaction is Inter-State or Intra-State. Depending upon the type of transaction, the tax to be levied is either IGST or CGST and SGST/UTGST. Hence, every transaction involving supply of goods will have to go through the test of provisions relating to place of supply of goods in order to determine which tax is to be levied. Thus, under GST Regime, the place of supply is not only relevant for services but also for the supply of goods. In this article, we shall be discussing on provisions relating to place of supply for goods.

In GST, the manner in which a supply is to be determined as Inter-State Supply or Intra-State supply has been provided in the Integrated Goods and Service Tax Act, 2017. To determine whether a transaction is an Intra-State or Inter-State, we have to identify two aspects i.e., location of Supplier and the place of supply. Where the location of supplier and the place of supply is within the State/Union territory then the transactions is said to be an Intra-State transactions and where the location of supplier is in one State/Union territory and the place of supply is in another State/Union territory, then the transactions is said to be an Inter-State transaction. The Imports and Export transactions are always considered as Inter-State Supplies. Similarly, the supply to SEZ units or developer is always treated as Inter-State transaction even the location of supplier and place of supply are in same State.

Coming to provisions relating to Place of Supply of Goods, the transactions relating to other than export and import of goods is clearly defined in the Section 10 of Integrated Goods and Services Tax Act, 2017 and the transactions relating to export and import of goods is clearly defined in the Section 11 of Integrated Goods and Services Tax Act, 2017.

Place of Supply of Goods – An Overview



Transactions where place of supply of goods supplied otherwise than by way of imports and exports, are divided into five types.

1. Supply involving movement of goods from one location to another
2. Supply undertaken on the direction of third person
3. Supply without involving movement of Goods
4. Supply requiring the goods being assembled at site
5. Supply of goods on board a conveyance

#### I. Movement of Goods:

As per Section 10(1)(a), *“where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient”*.

It implies that where the supply involves movement of goods from one location to another location, the place of supply of such goods shall be the place where the movement of goods is terminated for delivery to the recipient.

For example, Ramya Enterprises of Gujarat gets an order of 150 flower vases from Chandra Enterprises who is located in Assam. Chandra enterprises visited Ramya Enterprises and took the delivery of 150 flower vases at their factory in Gujarat. Chandra Enterprises, upon taking delivery of goods, arranged transportation to move the goods to their shop in Assam. In this transaction, the movement of goods commences in Gujarat when flower vases were taken and transported to Assam and terminates at the shop of Chandra Enterprises where the flower vases are delivered. In this case, as the movement of goods is terminated at the shop in Assam, the place of supply is Assam. As the supplier, Ramya Enterprises is located in Gujarat and place of supply is in Assam, the supply shall be treated as Inter-State Transaction and accordingly, IGST will be charged.

#### II. Movement on the direction of third person

As per section 10(1)(b), *“where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person”*.

It implies that where the goods are delivered by the supplier to a recipient or any other person on the direction of third person, the place of supply will be the location of such third person and not where the delivery terminates.

**For example**, Ravi raja Traders, a dealer in leather bags, located in Mumbai, receives an order from Hyper Traders, also located in Mumbai. The order is for supply of 100 bags, with an instruction to ship the bags to Global bags, who is located in Uttar Pradesh. Global bags is a customer of Hyper Traders.

There are two parts in this transaction

- Firstly, Ravi raja Traders is a supplier of leather bags and Hyper Traders is a buyer. In this case, Ravi raja traders bills the transaction to the Hyper Traders, whereas Hyper Traders instructs Ravi raja Traders to ship the goods to Global bags.
- Secondly, Hyper Traders are the supplier and the Global bags are the buyer. Here, Hyper Traders bills transaction to Global bags and endorses a copy of Consignment note (goods shipped in a courier by Ravi raja Traders) in favour of Global bags. This Consignment note will enable Global bags to take the delivery of the goods.

In this case, on the instruction of Hyper Traders, Ravi raja traders ship the goods to Global bags. Here, Hyper Traders is deemed as third person. Therefore, the place of supply will be the principal place of business of the third person, i.e., Mumbai. Accordingly, Ravi raja Traders charges CGST and SGST on billing to Hyper Traders even though the goods are moved to Uttar Pradesh. The second part of the transaction between Hyper Traders and Global bags will be interstate, and IGST will be charged accordingly [as per Section 10(1)(c)].

### III. No Movement of Goods

As per Section 10(1)(C), *“where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient”*.

It implies that where supply doesn't involve movement of goods the place of supply of such goods is the location where the goods are made available to the recipient.

For example, Yojana Limited registered in Maharashtra sold its Uni pole which is located at Madhya Pradesh to Vajra Limited registered in Delhi. Uni pole is nothing but goods which can be moved from one location to another location. However, the nature of supply is such that it does not require the movement of goods as the buyer, Vajra Limited is also intending to use this Uni Pole in Madhya Pradesh at the site of its erection. In this case, the supply does not involve movement of goods. Therefore, the place of supply shall be the location of goods i.e. Madhya Pradesh. As supplier, Yojana Limited is located in Maharashtra and place of supply is in Madhya Pradesh, the supply shall be considered as inter-state and accordingly IGST shall be charged.

### IV. Goods are assembled/installed

As per Section 10(1)(d), *“where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly”*.

It implies that where the goods are installed/assembled at a place, then place of supply shall be the place where the installation or assembly has been undertaken



For example, Mr. A who is registered in Telangana entered into a contract with Mr. B of Tamil Nadu for installation of solar panels for his new office in Mumbai. Here, the solar panels are installed at Mumbai office. In this case, the place of supply is Mumbai as the solar panels are installed in Mumbai.

## V. Supplied on board

As per Section 10(1)(e), *“where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board”*.

It implies that where the goods are supplied on board a conveyance or by any other means, the place of supply in that case is where such goods are taken on board.

For example, Refreshments were supplied on board in an aircraft proceeding from Chennai to Delhi. It had a stop at Hyderabad. The refreshments were taken on board at Hyderabad. The place of supply in this case is Hyderabad.

- As per Section 10(2), *“Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed”*.

In such case, the government will fix the manner to determine the place of supply of such goods.

### Place of supply of goods in case of Exports and Imports of goods:

Before going into the provisions with respect to exports and imports, let us know how understand how the terms are in GST law. The terms ‘Export of goods’ and ‘Export of services’ are separately defined in IGST Act, 2017. Similarly, the terms ‘Import of goods’ and ‘Import of services’ are also separately defined in IGST Act, 2017.

As per Section 2(5) of IGST Act, 2017, *“export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.*

It implies that the export of goods means taking goods from a place in India to a place outside India.

As per Section 2(10) of IGST Act, 2017, *“import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.*

It implies that the Import of goods means bringing goods to a place in India from a place outside India.

Place of supply provisions relating to Export and Import of goods are: -

- As per Section 11(a), *“The place of supply of goods, imported into India shall be the location of the Importer”*.

It implies that in case of Import of goods, place of supply is location of the importer in India i.e., principal of business or the additional place of business.

For example, Continental Coco Limited which is located in Andhra Pradesh imports raw material from Indonesia. The goods are cleared from Customs at Mumbai Port. In this case, though the goods are imported in Mumbai (Maharashtra), place of supply is Andhra Pradesh as it is the location of the importer.

- As per Section 11(b), *“The place of supply of goods, exported from India shall be the location outside India”*.

It implies that in case of export of goods, place of supply is the location outside the place of India.

For example, Continental Coco limited export the finished goods to England. Here, place of supply is England, which is outside India.

#### **Conclusion:**

In view of the above discussion, ‘determination of place of supply’ is sine qua non to determine the applicable type of GST tax i.e. IGST or CGST&SGST. Thus, the place of supply shall be required to be determined on the basis of the principles enumerated above.

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*This article is contributed by Bharadwaja , Intern of SBS and Company LLP. The author can be reached at [interns@sbsandco.com](mailto:interns@sbsandco.com)*

**FEMA****REPORTING OF ADVANCE REMITTANCE FORM (ARF) TO RBI**

Contributed by Sunil Kumar &amp; Vetted by CA Murali Krishna |

**I. Introduction:**

Foreign Exchange Management Act, 1999 (FEMA) is administered through the Authorised Persons. It is based on the declarations made to them by persons while undertaking the transactions. The Reserve Bank, therefore, has prescribed various reports and forms under FEMA to be submitted by/through Authorised Persons/ Authorised Dealer (AD) Category – I Banks/ Authorised Banks. Accurate compilations and timely submission of these reports are of critical importance as they not only act as a supervisory tool but also help in fine-tuning the policies relating to Foreign Exchange transactions regulated under FEMA.

**II. Reporting under statutory requirements:**

As per paragraph-9(A)(1) of Schedule I of FEMA Regulations, 2000 and Regulation 13.1(1) of FEMA FDI Regulations, 2017, an Indian company which has received amount of consideration for issue of capital instruments (Shares/ Convertible Debentures or any other instruments as per Foreign Direct Investment Scheme) and where such issue is reckoned as FDI, then Indian company shall report each receipt (including each upfront/ call payment) mentioning below details in ARF to the concerned Regional Office (RO) of the Reserve Bank of India (RBI) within 30 days of receipt of funds from the Foreign Entity.

**III. What is an ARF:**

ARF is a form containing details such as

- Name of the Indian Company
- Address of the Indian Company
- PAN (Permanent Account Number) of the Indian Company
- Name of the AD Bank
- Address of the AD Bank
- Name of the Foreign Investor
- Address of the Foreign Investor
- Date of receipt of funds
- Amount received in Indian Rupees
- Amount received in Foreign Currency (if specifically mentioned in the certificate)
- Type of Foreign Currency (if specifically mentioned in the certificate)
- Conversion Rate (if specifically mentioned in the certificate)
- Bank Account details into which the funds have been credited (Account Number, IFSC).

**For Example:** ABC Private Limited is an Indian Company. It has received funds from an US company named XYZ LLC on 10th February, 2018. ABC has to report the amount received in ARF within 30 days. Hence, due date for filing of ARF is 12th March, 2018. The date of filing is reckoned only on the date on which the ARF is forwarded to RBI and no other date is considered.

#### IV. How to file ARF:

Earlier reporting of FDI was done through offline forms. We have been visiting the AD bank and submitting the forms to them in physical form. Now the scenario has been changed, reporting platform has enabled the customer to create an account in the e-Biz portal at the time of initial submission of the forms. Later on, for filing the forms, login into the e-Biz portal, fill the online Form ARF completely and then submit the same using Digitally Signed Certificates (DSC). AD Bank will be required to process the completed forms, verifying the contents from the available documents, if necessary by calling for additional information from the customer and then submit the same for RBI to process and allot the Unique Identification Number (UIN). With effect from 08.02.2016, filing of Form ARF need to be mandatorily filed through e-Biz portal.

#### V. Documents required for filing form ARF:

- **Know Your Customer (KYC) in respect of Non-resident Investor:** KYC is a six-pointer form in which is issued by the remitter bank. It contains name of the remitter, registration number, registered address, name of the investor's bank, investor's bank account number, period of banking relationship between the investor and investor bank. This is a mandatory document to be attached to the form at the time of filing. Lack of this, makes an application incomplete and AD bank will be put form for re-submission with KYC.
- **Foreign Inward Remittance Certificate (FIRC):** FIRC is an optional attachment to the Form ARF. It is issued by the concerned AD bank in which FDI have been received. Upon submission of a request letter by the investee after the receipt of funds, FIRC will be issued. It is a typical document containing the details of investor, investment amount details, purpose of investment and such other required details as required. However, FIRC need to be mandatorily obtained by the company for all capital account transactions.

#### VI. Consequences of non-reporting of ARF:

In case of non-reporting of FDI received, it shall be treated as a contravention of the provisions made under FEMA. It may be required to compound all the contraventions made under FEMA regulations either by suo moto or by notice from RBI. For compounding the contraventions, an application has to be filed with RBI RO as per the prescribed procedure. In some cases of non-reporting of FDI, we may be required to submit compounding application to Central Office of RBI.

In case, the company has contravened the provisions, Late Service Fee (LSF) at the rates prescribed can be paid, without opting for compounding.

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*This article is contributed by Sunil Kumar , Intern of SBS and Company LLP. The author can be reached at [interns@sbsandco.com](mailto:interns@sbsandco.com)*

**SATURDAY SESSIONS**

S.No.	Event	Date	Speaker	Venue
1	Place of supply of Goods Under GST Act	21/04/2018	Bharadwaja	SBS - Hyd
2	Job work	28/04/2018	Divyasree S	SBS - Hyd

**SESSIONTIMINGS: 2:30 to 4:30 PM**



*Job work - Divyasree S*



*Place of supply of Goods Under GST Act - Bharadwaja*



## Team SBS

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**Hyderabad:** 6-3-900/6-9, #103 & 104, Veeru Castle, Durganagar Colony, Panjagutta, Hyderabad, Telangana

**Kurnool:** No. 302, 3rd Floor, V V Complex, 40/838, R.S. Road, Near SBI Main Branch, Kurnool, Andhra Pradesh

**Nellore:** 16-6-259, 1st Floor, Near Santi Sweets Opp: SBI ATM, Vijayamahal Centre, SPSR Nellore, Andhra Pradesh

**Tada:** 8-3-425/2, Flat No. 202, 2nd Floor, Bigsun Avenue, Near SRICITY, TADA, SPSR Nellore Dist, Andhra Pradesh

**Visakhapatnam:** # 39-20-40/6, Flat No.7, Sai Yasoda Apartments, Madhavadhara, Visakhapatnam (Urban), Vizag, Andhra Pradesh

**Bengaluru:** B104, RIRCO, Santosh Apartments, Wind Tunnel Road, Murugeshpalya, Old Airport Road, Bengaluru, Karnataka.

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