

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 an SEZ to DTA is considered as import for the DTA unit. Moreover, any supply from DTA to an SEZ is considered as export. On the other hand supplies from DTA to an EOU are considered as deemed exports.

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 the fiscal treatment, SEZs are zero rates and hence exempt from payment of GST while in the case of EOUs, the principle of refund of GST paid is applicable.

Minimum investment in plant and machinery and building is Rs 1 crore for EOUs. 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 TaxCredit 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. Can 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.

Frequently asked questions on Foreign Trade Policy 2023:

1. What is importer-exporter code (IEC)? Is it mandatory?

IEC is a 10-character alpha-numeric number issued by DGFT, to every entity who wishes to undertake export or import activities in India. At present, the IEC is same as the Permanent Account Number (PAN) which is issued to every legal entity in India for corporate income tax purposes. For export or import of goods in India, it is mandatory for every entity to obtain IEC unless the requirement is specifically exempted. For export of services or software, IEC is necessary on the date of rendering services for availing benefits under the FTP.

Every person having an IEC is required to update its critical information such registered address, additional place of business, details of directors etc. on the DGFT portal on an annual basis.

2. What is registration CUM membership certificate (RCMC)?

RCMC is a membership certificate with the notified Export Promotion Council (EPC) or various Commodity Boards of India. RCMC is mandatorily required for applying any benefit or concession under the FTP unless specifically exempted. The validity period of RCMC is notified by each EPC and can range between one to five years which is required to be renewed after such period.

3. What incentives or remissions are available for exports from India?

There are two types of schemes under the FTP to promote export of goods from India. First, which provide upfront exemption from payment of Customs duty on imports subject to specified terms and conditions and second which provide a remission/refund of the duties paid on imports post completion of exports from India. The same are as follows:

1. Duty Exemption Schemes:

- Advance Authorisation/DFIA scheme – Duty free input/raw material from overseas supplier or through domestic supplier for export production
- Export Promotion Capital Goods – Duty free import or indigenous sourcing of capital goods for export production

2. Duty Refund/Remission Schemes:

- Duty Drawback Scheme
- Remission of Duties and Taxes in Exported Products (RoDTEP)

- Remission of State and Central Taxes and Levies (RoSCTL)

4. What is advance authorisation (AA)?

AA is issued to allow duty free import (both Basic Custom duty and Integrated GST) of any material in India, which is proposed to be used as an input for manufacture of a product to be exported out of India. AA can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer. AA is issued for inputs in relation to the final product either on the basis of Standard Input Output Norms (SION) notified or specifically fixed by the Government or based on self- declaration by the exporter. Import of goods under AA is subject to following basic conditions:

- Actual user condition: The advance authorization is issued on the condition that the materials imported under the license will be actually used by the importer for manufacture of exported goods and not for goods for domestic supply. The license is issued for a specified product and is non-transferable.
- Value-addition: The minimum value addition required to be achieved under AA is 15 percent for majority of the products. Thus, the FOB value of the goods required to be exported out of India must be at least 15 percent higher than the CIF value of imports of the inputs.
- Export-proceeds: The export proceeds must be realized in freely convertible currency or Indian rupees subject to certain condition.
- Validity period for import: Validity period for import of AA is 12 months from the date of issue.
- Export obligation: The export obligation must be completed within 18 months from the date of issue of authorization, or any extended period as may be notified by DGFT.
- Bank Guarantee or Letter of undertaking: Before clearance of imported goods through Customs, AA holder is required to execute a Bank guarantee or Letter of undertaking with Customs authorities, as may be applicable.

5. What is export promotion capital goods (EPCG) scheme?

The objective of the EPCG Scheme is to facilitate duty free import (both Basic Customs Duty and Integrated GST) of capital goods for pre-production, production and post production of goods for exports. The benefits under the EPCG scheme would be available only subject to suitable license obtained from the DGFT authorities which shall be valid for import of capital goods for 24 months from the date of issue of license. Capital Goods shall include:

- Capital Goods as defined in Foreign Trade Policy including in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods
- Spares, moulds, dies, jigs, fixtures, tools and refractories

Imports under EPCG Scheme shall be subject to an export obligation (EO) equivalent to six times of duties, taxes and cess saved on import of such capital goods. The exporters of Green Technology Products as defined in FTP would be entitled to a reduced EO of 75 percent.

Imported capital goods shall be subject to actual user condition till EO is complete and Export Obligation Discharge Certificate (EODC) is granted.

6. What is remission of duties and taxes on exported products (RoDTEP) scheme?

The objective of RoDTEP scheme is to refund duties or taxes which are a part of the cost of exported product including prior stage cumulative indirect taxes on goods and services used in the production and distribution of the exported product. The overall budget/outlay for the RoDTEP Scheme is finalized by the Ministry of Finance in consultation with Department of Commerce, taking into account all relevant factors.

Under the Scheme, a rebate would be granted to eligible exporters at a notified rate, which is calculated as a percentage of FOB value on export of items based on its 8-digit HS Code. Further, it is important to note that rebate is allowed subject to the receipt of sales proceeds within the prescribed time.

It is further to be noted that Duty Drawback, IGST and other GST refunds relating to exports can also be claimed along with the RoDTEP Scheme.

7. What is export oriented units (EOUs), electronic hardware technology parks (EHTPs), software technology parks (STPs) and bio-technology parks (BTPs) schemes?

Factories and manufacturing units undertaking to export their entire production of goods and services may set up their business in above mentioned schemes for manufacture of goods, including repair, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes. Projects having a minimum investment of Rs.1 Crore in plant and machinery are only considered for setting up as EOUs.

8. What are the benefits and limitations of EOU?

Benefits:

- Duty free imports or procurement from Bonded Warehouse/International Exhibitions of inputs, consumables, office equipment or other capital goods (including second-hand capital goods)
- Procurement of goods from Domestic Tariff Area qualifies as deemed export under GST (refund of GST available to either the EOU or the supplier)

Limitations/Obligations:

- An EOU unit would have to be a positive net foreign exchange (NFE) earner.
- Entire production of the EOU unit shall be exported subject to certain conditions.

9. What is deemed exports and what are benefits of deemed exports?

Deemed Exports under FTP refers to a transaction where manufactured goods do not leave India and yet the same qualify as exports. Certain categories of supplies as prescribed under the FTP qualify as Deemed Exports. Benefits for Deemed Exports subject to terms and conditions are as under:

- Benefits of AA/AA for annual requirement
- Deemed Drawback
- Refund of terminal excise duty for excisable goods

10. Are online approvals for various permissions under FTP time consuming?

FTP 2023 envisages process simplification and reduction in processing time through automatic approval of various permissions due to technology implementation. Some of the permissions which are granted online are as follows:

Permission type	Current processing time	Automatic route processing time
Issue of AA	3 to 7 days	1 day
Issue of EPCG	3 to 7 days	1 day
Revalidation of authorizations	3 days to 1 month	1 day
Extension of EO period	3 days to 1 month	1 day

11. Is merchandise exports from India scheme (MEIS) and service exports from India scheme (SEIS) continued in FTP 2023?

The Government has discontinued the incentives provided under MEIS and SEIS in FTP 2023.

12. Is merchanting trade allowed for all goods?

To develop India into a merchanting trade hub, FTP 2023 has introduced provisions for merchanting trade. These transactions involve shipment of goods by the supplier from one foreign country to a customer located in another foreign country without the goods coming to India. Usually, these transactions are executed through Indian intermediaries who receive orders from customers located outside India and place a back to back order for supply to another foreign vendor. As per the new provisions, such transactions are allowed subject to compliance with Reserve Bank of India (RBI) guidelines, except for goods in the CITES and SCOMET

list. Thus, merchanting trade of restricted and prohibited items under the export policy would now be possible till the time they are not included in CITES or SCOMET list.

13. Would transactions executed in Indian rupee qualify for export promotion schemes under FTP?

FTP 2023 has taken an effective step towards internationalizing the Indian rupee by facilitating International Trade Settlement in the said currency through special Vostro accounts, setup as per RBI regulations. Further, receipt of export proceeds against exports, if realized in rupees, would be considered under export promotion schemes notified under FTP 2023.

14. What are the consequences of non-realisation of export proceeds?

If an exporter fails to realize export proceeds within the time specified by RBI, they would be liable to return all benefits/incentives availed against such exports along with applicable interest, penalty, etc. in accordance with the provisions of FT (D&R) Act, Rules and the FTP 2023.

15. What are the policies for import of second-hand goods?

The categories of second-hand goods along with the applicable import policy and conditions are as follows:

Sr. No	Categories of second-hand goods	Import policy	Conditions, if any
I	Second-hand capital goods		
(a)	Desktop computers and their refurbished spares/parts Air conditioners and diesel generating sets	Restricted	Importable against authorisation
(b)	All electronic and IT Goods notified under the Electronic and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"

(c)	Refurbished/re-conditioned spares of capital goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80 percent residual life of original spare
(d)	All other second-hand capital goods	Free	No conditions
II	Second-hand goods other than capital goods	Restricted	Importable against authorisation
III	Second-hand goods imported for the purpose of repair/refurbishing/re-conditioning or re-engineering	Free	Subject to condition that waste generated during the repair/refurbishing of imported items is treated as per domestic laws/rules/orders/regulations/technical specifications/environmental /safety and health norms and the imported item is re-exported back as per the Customs Notification

16. Is import/export of goods for exhibitions, fairs or demonstration permissible?

Import/export of goods (except items in the “Prohibited” or SCOMET List) required for the temporary exhibition by foreign/Indian exhibitors at exhibitions, fair or similar shows is allowed duty free, on submission of a bond/ security to Customs or ATA Carnet and subject to condition that the goods shall be re-exported within a period of six months or such extended period as may be granted.

17. Explain India's export control policy called special chemicals, organisms, materials, equipment and technologies (SCOMET)?

SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies. Export of dual-use items including software and technologies having potential civilian/industrial applications as well as use in weapons of mass destruction are regulated under the SCOMET List. Accordingly, the SCOMET list is National Export Control List of dual use items and is aligned to the control lists of all the multilateral export control regimes and conventions.

Further, SCOMET policy also emphasizes on alignment of India's export control with its international commitments under various export control regimes (Wassenaar arrangement, Australia group and Missile Technology Control Regime) to control trade in sensitive and dual use items including software and technology.

FTP 2023 has introduced general authorizations for export of certain SCOMET items to streamline licensing of these items and make export of SCOMET items globally competitive by focusing on simplifying policies to facilitate export of dual-use high-end goods/technology such as UAV/drones, cryogenic tanks, specified chemicals etc.

18. What are towns of export excellence (TEE)?

Towns producing goods more than 7.5 billion Indian rupees can be recognized as TEE based on potential for growth in exports. However, for TEE in Handloom, Handicraft, Agriculture and Fisheries sector, the threshold limit is 1.5 billion Indian rupees. In addition to existing 39 towns of export excellence, four new towns of export excellence are declared in FTP 2023 which are as under:

Town of export excellence	Product category
Faridabad, Haryana	Apparel
Moradabad, Uttar Pradesh	Handicrafts
Mirzapur, Uttar Pradesh	Handmade Carpe
Varanasi, Uttar Pradesh	Handloom and Handicraft

Benefits:

- Recognition/credibility to industrial units of the region/town while exploring/expanding into newer markets
- Priority access to export promotion funds under the Market Access Initiative Scheme
- Avail Common Service Provider benefits for export fulfillment under the EPCG Scheme

19. Who is a status holder exporter?

Status Holders are entities which are leaders in international trade and have successfully contributed to country's foreign trade. Status Holders are expected not only to contribute towards India's exports but also provide guidance and handholding to new entrepreneurs. FTP 2023 has rationalized export performance threshold for recognition of exporters as Status Holders. This will enable more exporters to achieve higher status and reduced transaction cost.

Status house category	Existing export performance threshold (in USD Million)	Revised export performance threshold (in USD Million)
One Star	3	3
Two Star	25	15
Three Star	100	50

Four Star	500	200
Five Star	2000	800

20. Is there any amnesty scheme under FTP 2023? Which promotion schemes are covered under amnesty scheme?

Government has introduced a special one-time Amnesty Scheme for regularization of cases of EO defaults of AA and EPCG holders. Amnesty scheme is available for a limited period, up to 30 September 2023.