

Chapter 3: Internal control, audit and monitoring

3.1 Internal audit arrangement

No impact assessment was done before implementing EOU scheme by DoC. Neither was any midterm evaluation done while implementing the SEZ Act in direction competition to the EOU scheme. Though the EOU Scheme was introduced several years ago and considerable concessions are extended to the EOUs, there is no structured internal audit mechanism in the MOC&I to assist in oversight of the functioning of EOUs. Absence of structured internal audit arrangement is fraught with the risk of undetected misrepresentation of facts by EOUs and there is a need to strengthen the jurisdictional Commissionerates dealing with Direct and Indirect Taxes administration.

Annual monitoring of functioning and performance of units are carried out by DCs through Quarterly/Half yearly/Annual returns furnished by units. Based on such review, DC's inform/suggest to DoC corrective measures to enable defaulting units to fulfil their obligation.

Information on EOU's are not captured and displayed in the dedicated website of DoC/EPC/EOO, therefore, it was not made available to audit.

Neither the Controller of Aid, Accounts and Audit (DEA) nor Chief Controller of Accounts (DoC) has audited the EOU scheme.

DoC in February 2015 admitted that neither internal audit of EOUs at field level have not been conducted so far nor any audit has been conducted by the Controller Aid Accounts and Audit of the scheme during 2009-10 to 2013-14.

Recommendation 2: *DoC may institutionalise a system of regular internal audit of the EOU scheme and may take steps to collect, clean, collate and communicate updated data on the dedicated website.*

DoC in their reply (January and February 2015) stated that DCs have to monitor Foreign Exchange Realisation/remittances of EoU in coordination with the concerned GM of RBI as per RBI instructions according to Appendix 14-I-G of HBP.

- At present, the APRs are examined by DCs with the assistance of CAs appointed by respective Zones for internal audit.
- The zonal DCs have been directed to put the year-wise data of export and import of EOUs on the website of the Zone Administration.
- Institutional framework for internal audit is being created by DoC.

No documentary evidence was however produced by DoC.

3.2 Annual Progress Report (APR)

HBP Volume I stipulate submission of APR by EOUs in the Form prescribed where in the EOUs report procurement of raw material/capital goods, imported as well as indigenous, export as well as local sales, etc. APR is the tool through which UAC monitors the EOUs. Every EOU need to furnish an APR within 90 days of close of financial year failing which further imports and DTA sale will not be permitted.

3.2.1 Non/delay in filing APR

Audit scrutiny of records in the offices of the DC SEEPZ Mumbai, DC NSEZ Noida and DC VSEZ, Visakhapatnam revealed delay ranging from 1 month to 20 months in filing of 948 APRs. In SEEPZ, Mumbai, there was delay in filing of APRs in 57 per cent cases (925 cases out of 1615 APRs filed during 2009-13).

Further, audit also observed that 419 EOUs (128 units in SEEPZ Mumbai, 286 units in NSEZ Noida and five units in FALTA Kolkata respectively) were neither formally de-bonded nor filed APRs during the period 2009-14. One such case of non-filing of APR is discussed below.

Box 1 Illustrative case on filing Annual Progress Report (APR)

M/s Parmeshwar Creations Pvt. Ltd under the jurisdiction of NSEZ, NOIDA, applied (October 2005) for conversion from DTA into EOU. DC, NOIDA, SEZ issued LoP) in March 2006. As per the terms and conditions of LoP, the unit was required to submit APR to the DC, NOIDA SEZ and to obtain registration from Central Excise department for EOU. The unit neither submitted any APRs upto 2011-12 nor got registered with Central Excise Department as EOU. Legal Undertaking (LUT) was also not signed. The unit was allowed exemption of ₹ 1.40 crore under section 10 B of Income Tax Act. Development Commissioner, NSEZ, NOIDA cancelled the LoP while imposing penalty of ₹ 75 lakh (October 2013). However no action has been initiated to recover the IT benefit availed under section 10 B of IT Act (November 2014).

DoC in their reply (January and February 2015) stated that the unit has deposited penalty of ₹ 15 lakh out of ₹ 75 lakh (20 per cent) and filed appeal in DoC against the DC's order in original (O-I-O).

No documentary evidence was however produced by DoC.

DoC in their reply (January and February 2015) stated that instructions are being issued to all the DCs to ensure timely filing of APRs.

3.2.2 Mismatch of figures as per APRs and Excise data

A comparative study of data of import and export for the period 2009-10 to 2013-14 furnished by the Central Excise Department and the corresponding data in APR furnished by the units has revealed that there was a mismatch in the figures of import and export reported by units to DCs and figures of

Central Excise Department in case of seven units as detailed in the table overleaf.

Table 5: Mismatch of Import data

(₹ in crore)				
Name of the unit (M/s)	Development Commissioner	Period	Import data as furnished by DC	Import data as per Excise Department
ASB international	SEEPZ, Mumbai	2009-10 to 2012-13	354	428.37
A R Sulphonates	SEEPZ, Mumbai	2009-10 to 2012-13	372.04	385.18
Sandvik Asia Unit II	SEEPZ, Mumbai	2009-10 to 2012-13	247.08	856.62
BEL Optronics	SEEPZ, Mumbai	2009-10 to 2012-13	300.63	328.14
Santc Exim Pvt. Ltd	NSEZ Noida	2009-10 to 2012-13	0.36	0
P.P. Jewellers (Export)	NSEZ Noida	2009-10 to 2012-13	566.81	386.15
P.C.Jewellers	NSEZ Noida	2009-10 to 2011-12	159.91	7.08
Albion Consulting Pvt. Ltd	NSEZ Noida	2009-10 to 2011-12	1.16	1.05
Wipro Ltd. Jasola	NSEZ Noida	2010-11 to 2012-13	38.75	8.05

The possibility of incorrect decision on fulfilment of NFE in the above cases cannot be ruled out.

Similar observation was also made in earlier PA Report (No. 7 of 2007), however department did not furnish any reply to that.

DoC in their reply (January and February 2015) stated that there is no provision or method in the present policy to cross verify APR data & Central Excise data. However, for reconciliation of the figures, factual status report has been called from the jurisdictional Central Excise Authorities.

DoC may consider devising mechanism to cross verify APR data and Central Excise data.

3.2.3 Domestic purchases (deemed export by DTA units) by EOUs not reflected in the APR

As per explanation II below notification No. 23/2003 CE dated 31 March 2003, goods received from DTA under the benefit of deemed export availed under paragraph 8.3(a) and (b) of FTP should be treated as imported goods.

During the scrutiny of APRs, audit observed that imports involving foreign exchange alone are reported and considered for calculating NFE. Apart from importing goods, EOUs also procure raw materials from domestic suppliers. However, the domestic procurement made by EOU units has not been reported in the APRs as imports as these are qualified as imports under notification cited above. Further the duty foregone in import and domestic procurements made by the unit were also not captured in the QPR/APRs.

In 13 cases, procurement of indigenous inputs from DTA amounting to ₹ 549.50 crore where suppliers claimed deemed export benefit for the supplies made to EOUs has not been reported by EOUs in APRs.

In our opinion, the cost to the exchequer for providing duty free imports/indigenous procurement need to be captured to analyse the real benefit accrued through export performance. DoC is mainly responsible for formulating FTP. The department may initiate measures to ensure that the proforma of QPR/APRs may be modified to the extent to include the domestic purchases and corresponding duty forgone.

DoC in their reply (January and February 2015) stated that as per Explanation-II of notification dated 31.03.2003 and 6.7.2007, goods received from any EoU/STP/EHTP and goods received from DTA under benefits under paragraph 8.3(a) and (b) of FTP shall be treated as imported goods.

The goods manufactured in India, when supplied from DTA to an EOU/STP/EHTP/BTP unit are regarded as 'deemed exports'. For such supplies, the DTA supplier is eligible for any/all of the benefits under FTP. On disclaiming of such benefits by the DTA supplier, these benefits can be claimed the receiver of goods.

Thus, goods manufactured out of such goods by EOU/STP/EHTP/BTP unit cannot be considered as goods manufactured wholly out of indigenous raw material to be eligible to avail benefits on clearances into DTA by payment of only central excise duty.

Supplies effected by the DTA unit under Chapter 8 of FTP has been treated as imported goods only for the purpose of payment of duty on DTA sale.

The audit contention that goods received by an EOU from DTA under benefits of deemed export should be reflected in the APR along with physical imports which should also be taken into account for the purpose of calculation of NFE. The explanation 2 of Central Excise Notification dated 6.7.2007 specifies to this effect. However, the said Notification is applicable for chargeability of duty on finished products sold by the EOU in the DTA and not for the purpose of calculation of NFE. The supplies effected by the DTA unit is in Indian Rupees and there is no outflow of Foreign Exchange and hence not considered as Import under Foreign Trade Policy.

Recommendation No. 3: *DoC may take steps to ensure that APRs are submitted in time and these reports which are meant for monitoring the performance of EOUs may contain all relevant data not only of exports but also about duty foregone, DTA sale by the government for facilitating the exports.*

DoC in their reply (January 2015) stated that instructions are being issued to all the DCs to ensure timely filing of APRs by the EoUs. The issue of revising APR format to include a column on duty forgone data will be examined in consultation with the concerned Ministries/Departments.