



TAX ALERT: OVERVIEW OF SEZs

A close look at Special Economic Zones in Kenya

Introduction

Although the concept of preferential tax regimes is not new in Kenya, the introduction of Special Economic Zones (SEZ) is a welcome addition to these regimes. SEZ have been adopted in various African states such as Ethiopia, Egypt, Zambia and Nigeria. Kenya has followed suit and is taking steps to actualize the economic pillar goals set out in the Vision 2030 which include establishing SEZ.

This has been done through enacting the Special Economic Zone Act (SEZA) which came into force on the **15th of December 2015** as well as the introduction of the 2016 SEZ Regulations. These policies create a framework for creation of these zones and the management and regulation of SEZ.

Currently there are 9 gazetted zones, 3 of which are owned by the Government and the remaining privately owned.

Special Economic zones

A SEZ is a designated area where there are preferential trade and business policies that would not necessarily apply to other enterprises operating outside the designated area. This is quite similar to an EPZ which is a designated area that offers tax and other incentives to encourage manufacture for export. However SEZs are not only geared for export but towards local consumption as well.

It is created to enable a suitable business environment that encourages trade through exports, fosters both local and foreign investments and creates employment.

Under the Act, the SEZ are open to both public and private enterprises and cater to various sectors including tourism and recreational zones, agricultural zones, free ports, industrial parks, science and technology parks, free trade zones, business service parks, ICT parks and free trade zone areas among others.

SEZ Authority and regulation

The SEZ Act establishes the SEZ Authority (SEZA) whose functions include: to oversee the

establishment and operation of the SEZ, processing and approving of licenses, implementing necessary policies, procuring SEZ developers and operators; among others.

SEZ Stakeholders

The SEZ Act provides for various ways one can participate or invest in a SEZ as follows;

- SEZ Developer- These are corporate bodies that create SEZ and are at liberty to operate in the zones or not. The SEZ operator invest in land and develop facilities that will form part of the SEZ.
- SEZ Operator – These are corporate bodies that operate and manage SEZ.
- SEZ Enterprise- These are corporate bodies that operate in SEZ.

Qualification criteria

Companies looking to exploit SEZ incentives can apply to be SEZ enterprises. These companies have to meet various criteria as follows;

1. Have to be incorporated in Kenya although foreign owned enterprise can qualify provided it is incorporated in Kenya.
2. Have to engage in activities that are eligible to be undertaken in the SEZ.
3. Do not have a negative impact on the environment, is not a security threat or health hazard.

SEZ developers and operators have to meet the same criteria as SEZ enterprises as well as have suitable financial, managerial and technical capacity associated with development projects associated with SEZ and own or lease land within the SEZ.

Application for a SEZ project

In order to operate, develop or carry out business in a SEZ one needs to apply for an SEZ license. Apart from this the applicant will be required to pay the required fees. Like in an EPZ, the applicant will then transition to the SEZ upon acquiring the required license. The application is made to the SEZA and is reviewed based on the engineering and financial plans, financial viability and environmental and social impact of the SEZ project in question.

The decision will be announced within a month's time from the application date. The license issued shall specify the activity to be carried out by the applicant and shall be valid for a specified period. The license can be revoked by the authority at any time if the applicant does not comply with conditions prescribed.

A SEZ developer will be deemed to be a developer once the Cabinet Secretary for Industrialization and enterprise development approves development in SEZ through public, private and public private partnerships. The SEZ developer will also be required to undertake measures to develop or manage integrated infrastructure facilities.

Tax Incentives and provisions

The SEZ offers both fiscal and non-fiscal incentives. The latter include land, administrative incentives and infrastructural incentive. The fiscal incentives include tax and non-tax incentives such as;

- Corporation tax rate of 10% for the first 10 years and 15% of ten years.
- Supply of goods or services to a SEZ developer/operator or enterprise will be zero-rated for VAT purposes.
- Duty exemptions when importing to the SEZ Zone this includes import declaration fees.
- Excise duty exemption.
- Investment deduction allowance of 100% in Nairobi, Kisumu and Mombasa municipalities. 150% deduction in areas outside these municipalities.
- 5% withholding tax on all payments except dividends which are exempt from WHT.
- Exemptions under certification as per Foreign Investment and Protections Act.
- Work permits for up to 20% of foreign full-time employees; however, this could increase for specialized projects.
- Negotiated rates for suppliers such as power and electricity.
- Stamp Duty exemptions on business transactions done by SEZ stakeholders.
- Exemptions on advertisements and business service permit fees.

- Exemptions on the provisions of Foreign Investment Protection Act (FIPA) which lays out provisions and requirements for the investment of foreign assets in Kenya (by foreigners) and Statistics Act.
- Exemptions on obtaining of the following license which include manufacturing license for Tea manufacturers, hotel liquor and liquor license, filming license and license to trade in unwrought precious metals.
- Exemption on rent and tenancy controls that may apply to shops, hotels and catering establishments.
- Other benefits including protection of property under SEZ from nationalization and expropriation, repatriation of capital and profits without any foreign exchange constraints and protection of intellectual property.
- And any other exemption that may be granted as per SEZ Act which will be based on consultations made with the Cabinet Secretary (CS) on matters relating to industrialization.

Although the SEZ Act does not expressly include other levies or duties which are collected by KRA and other bodies under various other acts not mentioned for instance standards levy for manufacturers and industrial training levy among others, The Act still allows for other exemptions to be granted under the SEZ Act based on consultation with the Cabinet Secretary for matters relating to industrialization.

Customs treatment in SEZ

A SEZ will be considered as a separate customs territory from Kenya similar to an EPZ such that any goods or services taken out of Kenya or any other state and into the SEZ are considered as exports and any taken into Kenya from the SEZ are considered as imports into Kenya. Goods and services can only be taken out of the SEZ for export, entry to a customs-controlled area with approval of proper officers, entry to a customs territory prior to complying with customs regulations and repair, maintenance or further processing after approval by proper officer.

Other than this, goods manufactured outside Kenya will be labelled as outputs from the country of origin. SEZ shall operate in conformity to provisions outlined in the East African Community Customs Management Act.

Work permits

Up to twenty percent of full-time employees of the SEZ enterprises, developers and operators shall be entitled to work permits. The remaining percentage can obtain additional work permits for specialized sectors.

Let's talk

For further information on SEZs or EPZs or any other tax queries kindly contact your regular Taxwise Africa Analyst or the contacts below:

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This will be a move to encourage mobilization of labor and foreign investment, especially where more advanced professionals would promote growth of local industries.

Way Forward

The idea behind the SEZ is appealing as it will attract both local and foreign investors. The tax incentives offered shall foster a suitable environment for business. In our next article we shall review how the SEZ regime is set to overcome the shortcomings of the EPZ regime.

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