

Tax Alert

The Special Economic Zones Act

Introduction

With the view of establishing Kenya as the pre-eminent business hub in the region, the President on 11th September 2015 assented to the Special Economic Zones Act, 2015 (“SEZA” or “the Act”) which provides for the establishment of special economic zones (SEZs) in Kenya. The Act will come into operation on 15th December, 2015. Licensed entities under the SEZA will be able to benefit from tax incentives which include income tax exemptions, value added tax exemptions, customs and excise exemptions and work permit quotas amongst others. The Cabinet Secretary in charge of industrialization (“CS”) may, on the recommendation of the Special Economic Zones Authority (“the Authority”), declare any area as a SEZ by notice in the *Gazette*.

The SEZA is broader than the Export Processing Zones Act (“EPZA”), as the latter is primarily focused on manufacturing entities. While the EPZA has not been repealed, it is our current understanding that no new licenses will be granted under this legislation.

The SEZ Authority

The SEZA establishes the Special Economic Zones Authority which will be responsible for the establishment, operation and regulation of SEZs.

Types of Special Economic Zones

The types of SEZs that can be established under SEZA will include inter alia: business service parks, freeport zones, free trade zones, industrial parks, information communication technology parks, regional headquarters, science and technology parks, and tourist and recreation centres.

Benefits provided for in the Act

a) Work permits

Licensed SEZ enterprises, developers and operators shall be entitled to work permits of up to twenty percent of their full time employees and additional work permits may be obtained for specialized sectors on the recommendation of the Authority.

b) Tax benefits

Licensed SEZ enterprises, developers and operators are granted exemption from all existing taxes and duties payable under the Customs and Excise Act, Income Tax Act (“ITA”), East African Community Customs Management Act (“EACCMA”), Value Added Tax (“VAT”) Act and Stamp Duty Act on all SEZ transactions.

Transfer of goods and services from a SEZ into Kenya and other East African Community (EAC) countries would be subject to customs duties and procedures. Additionally, the provision of services from a SEZ into Kenya and the EAC would require approval from the SEZ Authority.

c) Other Benefits

Licensed SEZ enterprises, developers and operators are also granted exemptions from:

1. *the provisions of the Foreign Investments and Protection Act relating to certificate for approved enterprise;*
2. *the provisions of the Statistics Act;*
3. *the payment of advertisement fees and business service permit fees levied by the respective County Governments’ Finance Acts;*
4. *general liquor licence and hotel liquor licence under the Alcoholic Drinks Control Act, 2010;*

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5. *manufacturing licence under the Tea Act;*
6. *licence to trade in unwrought precious metals under the Trading in Unwrought Precious Metals Act;*
7. *filming licence under the Films and Stage Plays Act; and*
8. *rent or tenancy controls under the Landlord and Tenant (Shops, Hotels and Catering establishments) Act.*

The Finance Act 2015, which was assented to on the same day as the SEZA, has amended the Income Tax Act and the VAT Act, 2013 and introduced tax incentives for SEZ. The tax incentives for SEZ enterprises, developers and operators introduced by the Finance Act are as follows:

- The supply of taxable goods and services to SEZ enterprises, developers and operators licensed under the SEZA are exempt from VAT;
- SEZ enterprises, developers and operators will be subject to a reduced corporate tax rate of 10% for the first 10 years of operation and 15% for the next 10 years; and
- The applicable WHT rate for payments for services and interest to non-residents (other than payments for dividends) by SEZ enterprises, developers and operators shall be 10%.

The limited tax incentives introduced by the Finance Act seem to be inconsistent with the SEZA which grants a blanket exemption on all taxes. The Income Tax Act provides that tax exemptions provided in other acts of parliament are legally valid. This conflict will need to be resolved prior to licenses being issued under the SEZA.

Further, clarifications on the extent of transactions that SEZ enterprises, developers and operators can enter into with local Kenyan entities may be required in the regulations to be issued under the Act.

Regulations to be issued under the SEZA

The CS is empowered upon recommendation by the Authority to make regulations in respect of any matter required to be prescribed under the Act. Such regulations may include determination of the criteria for designation and Gazetting of SEZs as well as determination of the application process, criteria, conditions, terms and procedures for designation of SEZs and licensing of SEZ developers, operators and enterprises.

The regulations may also include the investment rules for SEZs, and the form of licences to be issued under the Act and the procedures from amendment and revocation of the licences. These regulations are yet to be published.

We shall issue a further alert once the regulations are published.

The enactment of the SEZ legislation confirms Kenya's commitment to create enabling environments for global and local investors.

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