

Special Tax Zones in South Africa

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SEZ Definition

- The Policy on the Development of SEZs in South Africa defines SEZs as “...geographically designated areas of a country set aside for specifically targeted economic activities, which are then supported through special arrangements (which may include laws) and support systems that are often different from those that apply in the rest of the country.”

SEZ vs Tax Haven

- There does not appear to be any explicit definition of a tax haven in South Africa, but from its use implies an entire jurisdiction where low to zero tax rates are applied, usually without any economic growth aim or incentive. Zones within jurisdictions do not appear to carry the classification of tax haven.
- SEZs in South Africa qualify for reduced corporate income tax (CIT) rates and certain other fiscal incentives. While SEZs qualify for a number of tax incentives within the zones, much of the administration does not differ to businesses outside of the zone.

Purpose per SEZ Act

1. A Special Economic Zone is an economic development tool to promote national economic growth and export by using support measures in order to attract targeted foreign and domestic investments and technology.
2. The purpose of establishing Special Economic Zones includes—
 - a) facilitating the creation of an industrial complex, having strategic national economic advantage for targeted investments and industries in the manufacturing sector and tradable services;
 - b) developing infrastructure required to support the development of targeted industrial activities;
 - c) attracting foreign and domestic direct investment;
 - d) providing the location for the establishment of targeted investments;

Purpose per SEZ Act

- e) enabling the beneficiation of mineral and natural resources;
- f) taking advantage of existing industrial and technological capacity, promoting integration with local industry and increasing value-added production;
- g) promoting regional development;
- h) creating decent work and other economic and social benefits in the region in which it is located, including the broadening of economic participation by promoting small, micro and medium enterprises and co-operatives, and promoting skills and technology transfer; and
- i) the generation of new and innovative economic activities.

Time frame

- Tax incentives limited to later of:
 - 10 years after operation commences in SEZ
 - 1 January 2024
- No specific time limit for the existence of the zone itself

Constitutional or other domestic limitations

- Zones remain subject to SA Constitution and all other laws
- Advantage (like large corporations) in having one-stop-shop
- No legal challenges raised against the SEZ

Discriminatory?

- Limitation test in terms of Constitution applicable:
 - Is there discrimination?
 - Is the discrimination unfair?
 - Is the unfair discrimination justifiable (if arising under a law of general application e.g. income tax)

Tax incentives summary

- Preferential 15% Corporate Tax (standard corporate rate 28%)
 - Businesses (prescribed in section 24(4) of the SEZ Act) that are located in a SEZ may be eligible for tax relief, including the reduced rate of corporate income taxation. In addition to satisfying the requirements of the SEZ Act, further criteria for some of the available tax incentives are in the Income Tax Act
- Building Allowance
 - Businesses and Operators operating within a SEZ may be eligible for tax relief, including the building allowance, subject to requirements in the Income Tax Act (10% for new or unused buildings acquired in SEZ).
- Employment Incentive
 - Businesses and Operators operating within a SEZ may be eligible for tax relief, including the employment tax incentive subject to requirements contained in the Employment Tax Incentive Act.

Tax incentives summary

- Customs Controlled Area
 - Businesses and Operators located within a customs controlled area of a Special Economic Zone will be eligible for tax relief as per the Value-Added Tax Act, the Customs and Excise Act, the Customs Duty Act and the Customs Control Act.
- 12I Tax Allowance
 - Greenfield investments (i.e. new industrial projects that utilise only new and unused manufacturing assets) – up to ZAR 900 million additional allowance
 - Brownfield investments (i.e. expansions or upgrades of existing industrial projects) – up to ZAR 550 million additional allowance
 - Training – up to ZAR 36,000 per employee up to a max of up to ZAR 30 million per project.

Reduced corporate rate

Qualifying companies

- Incorporated by law in force in SA (or part thereof); or
- Has place of effective management in SA
- Carries on business in SEZ through a fixed place
- Not less than 90% of company income must be derived from business conducted in one or more SEZs

In line with the Economic Policy certain industries excluded from the SEZs e.g. alcohol, tobacco, armaments etc. and additional specified by Minister

PEs and CFCs

- Qualifying criteria do not explicitly exclude
- Income threshold makes PE unlikely participant in SEZ

Sanctions and ring-fencing

- Failure to meet conditions means exclusion from preferential tax incentives
- No additional sanctions
- Excluded from preferential tax rate if 20% threshold (for expenditure or income) occurs with respect to transactions with connected persons (resident or with a PE in South Africa)
- Customs zone also provides for deemed “exports” and “imports” when transacting with the SEZ

Non-discrimination in DTC

Based on qualifying criteria, no apparent discrimination on the basis of:

- Nationality / Statelessness
- Foreign capital owners
- PEs unlikely to qualify for tax incentives in SEZs due to being part of a company (i.e. unlikely to meet the income threshold for reduced corporate tax)

Transfer Pricing and Associated Enterprises

- SEZs have “domestic” transfer pricing rule
- Also subject to standard transfer pricing rules
- Nothing to prevent normal application of Art 9

Relief mechanisms

- No new issues created by SEZs
- Mainly credit method in SA treaties
- Tax sparing provisions avoided (occur in very few treaties)

Exchange of information and Assistance in the Collection of Taxes

Nothing in SEZ legislation in South Africa would prevent exchange of information or assistance in the collection of taxes with respect to activities in SEZ