

New SEZ Regime

On 20 October 2017, the Ministry of Economic Development (“MoED”) published a draft of the Act on the principles to support new investments (the “Act”) which is going to replace the current Special Economic Zone (“SEZ”) regime. The Act provides new regulations regarding the availability of State aid for new investments, similar to the current SEZ regime; however, also introducing a number of new solutions.

What will happen to the existing SEZ permits?

The existing SEZ permits are still subject to current rules and are going to remain in force for the time specified therein. However, most of the SEZ permits currently do not specify the term of the SEZ permit. Most likely, they will apply until the end of the duration of the SEZs but the issue needs clarification.

The present SEZs will continue to exist until the end of 2026.

The existing SEZ Permits and SEZs will expire not later than at the end of 2026

What are the main assumptions of the new regime?

New system of Economic Areas

The availability of State aid for new investment will not depend on the location of the investment within the existing SEZ, meaning that there would be no territorial restrictions as it is currently the case. Under new rules, it will be possible to apply for SEZ aid throughout the territory of Poland, regardless of the place of the planned business.

Consequently, the whole country will be divided into Economic Areas and each such Area will be assigned to a SEZ Manger. The SEZ Managers will be the companies which currently serve as managers of the SEZs. The detailed division of Poland’s territory into Economic Areas is not known yet; however, it is anticipated that it should be generally consistent in terms of territory and a given SEZ seat (unlike now, when particular SEZs have territories in different regions of Poland).

The new rules will eliminate the long and burdensome procedure of extending the territory of SEZs if the investment area is not located in the SEZ.

There are going to be no territorial restrictions for new investments – the whole of Poland will be a SEZ

Available State aid

The income tax exemption is going to remain the primary measure of State aid available for new investments. However, investors will also be able to enjoy State aid in the form of free-of-charge services provided by the SEZ Managers of Economic Areas, in particular training and consulting.

The income tax exemption available for new investments is going to constitute regional aid. Therefore, the same State aid rules will continue to apply. In particular, State aid is going to be exempt from the obligation to notify the European Commission (assuming all other conditions are met) if the amount of granted State aid does not exceed the thresholds set forth in Regulation No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty (the so-called “block exemption regulation”) i.e.:

Aid intensity in a given area:	Notification threshold:
10%	EUR 7.5 million
15%	EUR 11.25 million
25%	EUR 18.75 million
35%	EUR 26.25 million
50%	EUR 37.5 million

Decision on support

The permits to conduct a business activity in SEZs (“**SEZ permits**”) are going to be replaced with decisions on support. These decisions will be issued by the MoED; however, as it is the case now, the MoED will be able to entrust the Managers with the assessment of investment projects and the issuance of the decisions.

The decision of support will indicate:

- the term of the decision;
- the subject of business activity to be undertaken by the holder of the decision;
- the number of new jobs to be created within a specified period of time;
- the amount of investment expenditures to be incurred within a specified period of time;
- the date of completion of the investment, after which the investment costs incurred by entrepreneur cannot be considered as eligible costs;
- the applicable quantity and quality criteria;
- the maximum amount of investment expenditures and the maximum amount of two-year labour costs, which should be taken into account when determining the maximum amount of State aid;
- the land on which the investment will be completed, taking into account the real estate registration data.

The procedure of applying for a decision on support is not specified in the Act (it will be set forth in an executive regulation to be issued by the MoED); however, it may be assumed that it should not be fundamentally different from the current procedure to award permits to conduct business activity in the SEZs.

The quality and quantity criteria

One of the most important new regulations is that new investments are going to be assessed on the basis of two types of criteria:

- **Quantity criteria** – the minimum investment expenditures in a particular poviát with a particular unemployment rate;
- **Quality criteria** – the criteria related to an investment’s compliance with the assumptions of the medium-term strategy of the country’s development, i.e. the criteria related to the investment’s contribution to the socio-economic development of the country and the region (the exact criteria are not yet known; however, from the information disclosed by the Ministry to the media it follows that these criteria may include such elements as the employment of specialized personnel, an R&D component, cooperation with universities and research institutes; support for micro, small and medium enterprises, and the development of human resources through non-salary benefits offered to employees etc.).

The detailed quantity and quality criteria are going to be set forth in secondary regulations which will be issued by the MoED.

Only the new investments meeting both types of criteria will be eligible for support.

New quality criteria of assessment of projects will be introduced

The duration of the income tax exemption

The decision on support will be issued for a specified time, not less than 10 years, yet no longer than 15 years.

In the case of an investment implemented in a location within a current SEZ territory, the decision on support will be issued for 15 years.

Maximum period of tax exemptions will be 15 years

Additional new solutions

The Act also includes several other new solutions, not envisaged under the current SEZ regulations, i.a.:

- **Investment Development Plan**

The SEZ Managers will be obliged to create Investment Development Plans for their Areas. Such plans must be approved by the MoED and must indicate the directions of the Managers’ policy to attract new investments. The plans will also provide a basis for the offer of services which could be provided by the Managers.

- **Council of an Economic Area**

Every SEZ Manager will be allowed to appoint a Council of its Area. The main tasks of such Council will include presenting opinions on issues related to the economic activity in the Area and proposing directions of action to improve the socio-economic development. The representatives of entrepreneurs operating in a given Area will be able to become members of such Council.

- **Record of Investment Support**

The Act envisages the creation of a central record where all information regarding the assisted investments would be gathered.

When will the new regime enter into force?

The Act is supposed to enter into after 14 days from the date of its publication. However, the first decisions on support are going to be issued only after the secondary regulations to be issued by the MoED also enter into force. Since the drafts of such regulations have not been published yet, it is not possible to determine the exact date when the new regime will start to function. However, it follows from the press statements given by Deputy Prime Minister M. Morawiecki that it is planned to implement the new regulations from the beginning of 2018.

Until the new executive regulations enter into force, the SEZ Permits will continue to be issued under present regulations.

It is possible that the new rules will apply at the beginning of 2018?

Further legislative works

The Act has to be adopted by the Parliament and signed by the President. The final wording of the Act as well as solutions proposed in the Act may change during the legislative proceedings. At the present moment, the Act was submitted for public consultations.



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