SOŁTYSIŃSKI KAWECKI SZLĘZAK

New SEZ Regime – UPDATE

On 20 October 2017, the Ministry of Economic Development ("MoED") published a draft of the Act on the principles to support new investments ("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, the Act also introduces a number of new solutions.

Since its publication, the Act has been subject to consultations and further work and on 2 January 2018, the MoED published its latest version (along with drafts of secondary regulations). This publication summarizes the new information and developments regarding the future SEZ Regime. For more information regarding the draft of the new regulation, please refer to our Legal Alert of October 2017 available at https://skslegal.pl/en/publikacje/english-planned-changes-to-the-sez-regime/.

What criteria will be applied to assess the new projects?

One of the most important changes in comparison to the current SEZ regulations is that every new project, in order to be eligible for support, will need to satisfy quantity and quality criteria. The draft of secondary regulations to the Act specifies both groups of mentioned criteria.

Quantity criteria

The quantity criteria are set forth as a minimum amount of eligible costs of the project depending on the unemployment rate in the poviat where the project would be located. The quantity criteria must be met in full in order for a project to qualify for support.

Minimum eligible costs (investment expenditures or two-year labor costs)	Unemployment rate in the poviat where the project is located (NA – national average unemployment rate)
100 million PLN	Unemployment of 60% of the NA or less
80 million PLN	Unemployment higher than 60% of the NA, but not higher than the NA
60 million PLN	Unemployment higher than the NA but not higher than 130% of the NA
40 million PLN	Unemployment higher than 130% of the NA but not higher than 160% of the NA
20 million PLN	Unemployment higher than 160% of the NA but not higher than 200% of the NA
15 million PLN	Unemployment higher than 200% of the NA but not higher than 250% of the NA

10 million PLN	Unemployment higher than 250 % of the NA

The higher the unemployment rate in the particular poviat, the lesser the requirements regarding the minimum eligible costs of a new project. At the present moment, the national average unemployment rate is 7% (as per 30 June 2017). Therefore, if a new project would be, for example, implemented in:

- the Wroclawski poviat (Dolnosląskie Voivodship), where the unemployment rate is 2.5% (which is 36% of the national average), the quantity criterion which would need to be met by the project in order to qualify for support would in principle amount to 100 million PLN; or

- the Przemyski poviat (Podkarpackie Voivodship), where the unemployment rate is 15% (which is 214% of the national average), the quantity criterion which would need to be met by the project in order to qualify for support would be smaller, i.e. 15 million PLN.

The quantity criteria described above will, however, be decreased in two cases:

- in the case of projects in the field of modern services for business (such as R&D Centers, Information Technology Offshoring, Centers of Excellence, Business Support Solutions or Shared Services Centers), it is planned that the quantity criteria will be decreased by 80% (although it is not fully clear under the current wording of the draft secondary regulations) – for example, a new project in the field of modern services for business implemented in the Wroclawski poviat would be eligible for support if its eligible costs amounted to at least 20 million PLN (i.e. the threshold of 100 million PLN would be decreased by 80%); or

- in the case of projects implemented by micro, small and medium enterprises, the quantity criteria will be decreased by 98%, 95% and 80% respectively.

Only new projects meeting the quantity criteria will be eligible for support.

Quality criteria

The draft of secondary regulations introduces two types of projects, i.e. production investments and investment in the field of modern services for business, although neither of these types is defined in the draft. Depending on the type of the project, different quality criteria would be applicable.

Quality criteria applicable to investments in the field of modern services for business
1. Creating high paid job offers and offering stable employment (at least 70% of employees on the basis of an employment agreement)
2. Investment in service projects supporting industries consistent with the current development policy of the country, in which Poland can gain a competitive advantage
3. Level of export sale (equal to at least the average intensity of export sales of non-financed enterprises)
4. Cooperation with research and academic facilities
5. Creating a center of modern services for business with a range that extends beyond Poland
6. Undertaking investments in poviats with an unemployment rate exceeding the average

unemployment rate
7. Support for micro, small and medium enterprises
8. Investment location in cities losing social and economic functions or neighboring municipalities or poviats or poviat-town areas in which the unemployment rate is at least 160% of the average unemployment rate excluding certain cities
9. Supporting employees in gaining educational and professional qualifications
10. Undertaking activities in the field of additional employee care

Quality criteria applicable to production investments
1. Highly skilled and stable employment qualified in a specific job (at least 70% of employees have an employment agreement)
2. Investment in industries consistent with the current development policy of the country, in which Poland can gain a competitive advantage
3. Level of export sales (equal to at least the average intensity of export sales of non-financed enterprises)
4. Development of sectoral clusters
5. Research & Development activity
6. Undertaking investments in poviats with an unemployment rate exceeding the average unemployment rate
7. Investor is a micro, small or medium enterprise
8. Investment location (location in cities losing social and economic functions or neighboring municipalities, or poviats or poviat-town areas in which the unemployment rate is at least 160% of the average unemployment rate excluding certain cities)
9. Cooperation with industrial schools
10. Supporting workers in gaining educational and professional qualifications

Support will only take the form of an income tax exemption

The initial draft of the Act envisaged two available measures of State aid available in relation to new investments, one of them being an income tax exemption, and the second one being free-of-charge services provided by the Managers of Economic Areas, in particular training and consulting. In the present version of the Act, the income tax exemption remains as the only available State aid measure, while the services provided by Managers of Economic Areas will be charged to investors.

How will the State aid intensity be established?

The draft of secondary regulations introduces new rules regarding the intensity of available State aid. Under current rules, the intensity of State aid in the form of an income tax exemption depends on the aid intensity in the region where the project is implemented as set forth in the Regional Aid Map, e.g. 35% in the Łódzkie Voivodship. Under the new rules, the intensity of aid could be reduced below the aid intensity set forth in the Regional Aid Map, depending on the unemployment rate in a particular poviat.

Maximum regional state aid intensity	Unemployment rate in the poviat where the project is located (NA – national average unemployment rate)
20%	Unemployment of 60% of the NA or less
25%	Unemployment higher than 60% of the NA, but not higher than 80% of the NA
30%	Unemployment higher than 80% of the NA, but not higher than the NA
35%	Unemployment higher than the NA but not higher than 130% of the NA
45%	Unemployment higher than 130% of the NA but not higher than 160% of the NA
50%	Unemployment higher than 160% of the NA

It should be noted that even if a project is to be carried out in a poviat with a very high unemployment rate, the aid intensity should not exceed the intensity for a given region as set forth in the Regional Aid Map e.g. a project undertaken in a poviat with an unemployment rate of more than 160% of the national average located in the Łódzkie Voivodship would still be eligible for the aid intensity of 35%.

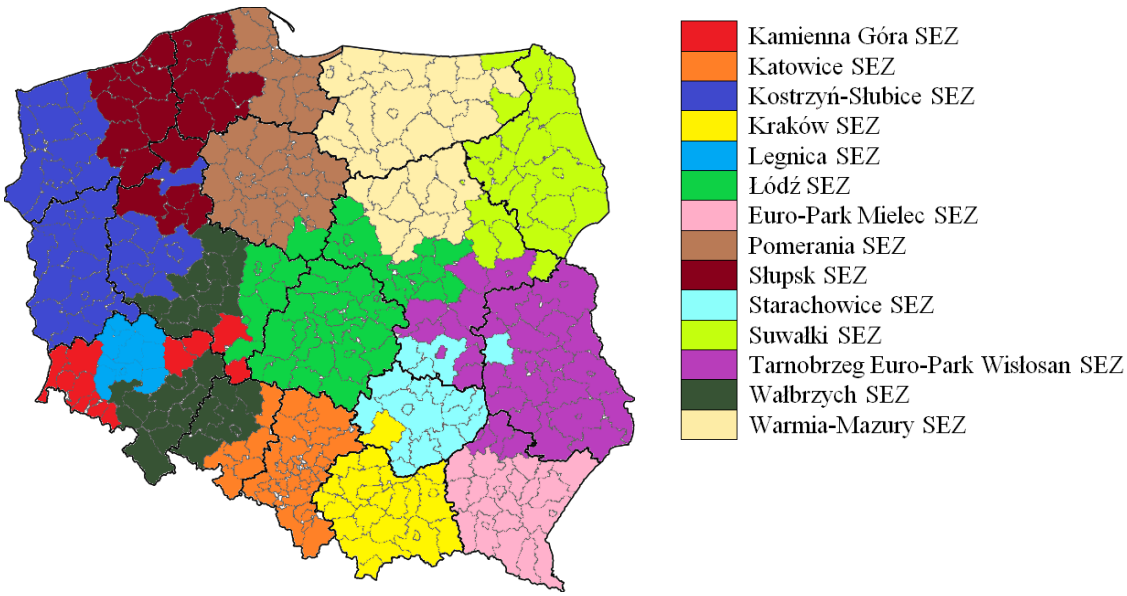
For how long will the tax exemption be available?

The term of the tax exemption will depend on the intensity of regional investment aid available in the region where the investment is located. The higher the intensity, the longer the time the tax exemption would be available:

Duration of tax exemption	State aid intensity (X)	Regions and their maximum regional State aid intensity
10 years	X < 25%	Capital City of Warsaw (10% aid intensity), Sub-region of Warsaw-West (20%);
12 years	25% ≤ X < 35%	Voivodships with a 25% aid intensity: Dolnośląskie; Wielkopolskie; Śląskie;
15 years	35% ≤ X ≤ 50%	Voivodships and regions with a 35% aid intensity: Kujawsko-Pomorskie, Łódzkie, Lubuskie, Małopolskie, Opolskie, Pomorskie, Świętokrzyskie, Zachodniopomorskie, Subregion Ciechanowsko-Płocki, Sub-region Ostrołęcko-Siedlecki, Sub-region Radomski, Sub-region Warsaw-East; Voivodships with 50% aid intensity: Lubelskie, Podkarpackie, Warmińsko-Mazurskie, Podlaskie.
15 years	n.a.	Areas which are currently within the boundaries of Special Economic Zones

How will Poland be divided into Economic Zones?

The draft secondary regulations regarding the division of Poland's territory into Economic Areas has also been published. The regulations divide Poland into 14 Economic Areas, each of them being assigned to one of the current SEZ Managers. The Economic Areas, unlike the present SEZ territories in many cases, are going to be much more coherent in territorial scope, meaning that the areas assigned to particular SEZ Managers will be in the vicinity of their offices.



What additional new solutions are being introduced?

- **Administrative procedure**

  Under current SEZ regulations, the SEZ Permits are issued either in the course of a tender procedure (in cases where the investor is also applying for the title to the land situated in an SEZ) or in the course of a negotiations procedure (in cases where the investor already has title to the land situated in an SEZ and is applying solely for an SEZ Permit). Under the current version of the Act, this is no longer going to be the case – the Decisions on Support are going to be issued within the general administrative procedure (i.e. without a tender or negotiations). Also, repealing, withdrawing and deeming the Decision on Support as invalid or expired will be subject to the general rules of administrative procedure.

  In principle, the Decisions on Support will be issued by the minister competent for economic affairs; however, the minister will be entitled to delegate this power to SEZ Managers (as it currently is the case).

- **Council of an Economic Area**

  Under the current version of the draft, every SEZ Manager will be obliged to appoint a Council of its Area (in the previous version this was not compulsory).

- **List of medium cities losing social and economic functions**

  The draft of secondary regulations introduces a list of 122 cities which were classified as cities losing their social and economic functions; therefore, being more eligible for support. In the case of investments in such cities, or poviats where such cities are situated, or in neighbouring communes, investors will be entitled to get the maximum available intensity of State aid. For example, an investment in Jelenia Góra (Dolnośląskie Voivodship), which is one of the cities on the mentioned list, would be eligible for the aid intensity of 25% (which is the maximum for the Dolnośląskie Voivodship) despite the fact that unemployment rate in Jelenia Góra is only 3.6% (which is 51% of the national average); therefore, pursuant to the rules described above, the intensity could be decreased to 20%.

- **Temporary suspension of issuing of Decisions on Support**

  The Act also envisages that the Council of Ministers will be entitled to suspend the issuance of new Decisions on Support for a specified period of time due to budgetary reasons.

Further legislative works

The Act has to be adopted by Parliament and signed by the President. The final wording of the Act as well as solutions proposed in the Act may change during legislative proceedings. At the present moment, work on the draft is in progress in the Council of Ministers. The agenda of next meeting in the Council of Ministers has not yet been announced.

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