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Polish Deal

Changes in the regulations concerning special economic zones (SEZ) and Polish Investment Zones (PIZ)

Narrowing the scope of exempting SEZ and PIZ income

- The regulations still have not introduced a project-driven approach to the settlement of income in a SEZ or a PIZ. It should still be possible to settle SEZ permits and support decisions in the order in which they are issued.
- The new regulations are evolutionary rather than revolutionary. Consequently, they clarify that the settlement of State Aid is based on the support decision or the SEZ permit under which the investment was commenced. Further, the new regulations introduce a definition of "commencement of an investment" which unifies how the authorities understand this term in practice.
- In the decision on support, it will be mandatory to provide PKWiU codes related exclusively to the realization of a new investment and the elements of the plan for the completion of a new investment. In practice, this may lead to the scope of the exemption being limited for investments to extend or change an existing plant if there were differences between the subject matter codes for the new and existing investments.
- Support under the PIZ may not be granted for investments located in areas with undeveloped mineral deposits, except for investments concerning those deposits.
- The possibilities to modify the SEZ permit and the decision on support will be restricted. Both will not be modifiable to the extent that they increase eligible costs. In the case of PIZ, there will be no possibility to amend the decision on support resulting in a decrease in the level of employment specified in this decision by more than 20% (a similar prohibition currently applies to SEZ permits).
- If entrepreneurs operate based on a decision on support or the SEZ permit and derive income from intellectual property rights, to determine the amount of such income, they should apply the nexus indicator as well as other conditions that are listed in the provisions of the Corporate or the Personal Income Acts.

Anti-abuse regulations in a SEZ and PIZ

- There are some amendments to the small anti-abuse clause for a SEZ and PIZ. The actions, other than concluding the contract, that are based on artificial factual acts will be classified as abusive.
- Expenditure on fixed assets, including means of transport, serving the entrepreneur's personal purposes is excluded from the definition of 'eligible costs'.
- A potentially perilous and discretionary change for officials, consisting of adding an anti-abuse clause to the conditions for withdrawing a SEZ permit or revoking a decision on support.

How to prepare for the new regulations

- Applying for decisions on support for new investments may require demonstrating a more vital link between this investment and existing projects. The scope of activities covered by the decision should be appropriately determined to mitigate the new requirements concerning linking PKWiU codes directly with a new investment.
- It may be necessary to examine the presence of minerals in the area of new investments.
- It is advisable to review settlements between an entity operating in a SEZ or PIZ with their related parties in terms of the market level of these settlements, and verify the allocation keys of revenues and costs within SEZ or PIZ entities between taxable and exempt.
- If you are planning to apply for a tax ruling regarding activity in a SEZ or PIZ, it is advisable to apply still this year and formulate the motion in such a way that the ruling will protect you also after changes in the regulations.

New instrument – investment agreement

- Investors planning or starting a new investment in Poland with a value of at least PLN 50 million can obtain an investment agreement with the Minister of Finance concerning the tax consequences of this investment.
- The agreement may include several arrangements, e.g. an advance pricing agreement (unilateral), a security opinion, binding excise or rate information, and an interpretation of tax law (a tax ruling).
- An application for an agreement may be submitted by an investor or a group of investors. The conclusion of an agreement is subject to an initial fee (PLN 50 thousand) and the main fee (from PLN 100 to 500 thousand).
- The agreement will bind the investor and the tax authorities. It will be valid for an agreed period, not longer than five years.
- Considering the planned scope, requirements, and costs of the agreement, the usefulness of this instrument for investors already present in Poland may be limited. However, it may be helpful for investors not yet operating in Poland or those who want to benefit from an amicable manner of concluding an agreement.



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