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SEZs: 28% or 15%?

While many companies are in the process of filing their provisional tax returns, the biggest question remains: at what rate should these returns be submitted?

The Special Economic Zone (SEZ) tax incentive and tax relief initiative is for companies operating in geographically designated areas of the country set aside for specifically targeted economic activities, and is an economic development tool to promote rapid economic growth by using support measures to attract targeted foreign investments and technology. The SEZ Act came into effect on 9 February 2016.

Location, location, location – not this time!

While a company may operate within a SEZ, section 12R of the Income Tax Act ("s12R") sets out additional criteria that has to be met before a company may benefit from tax-related incentives provided to SEZs.
These included, *inter-alia*:

- The company is incorporated in South Africa or is a company effectively managed in South Africa;
- The company carries on business in a SEZ, with such SEZ being designated by the Minister of Trade and Industry by notice in a Gazette;
- The company operates from a fixed base situated within that SEZ;
- No less than 90% of the income of that company is derived from the business carried on within that SEZ;
- The company does not engage in certain manufacturing activities, including those related to the production of alcohol, tobacco products, weapons and ammunition or bio-fuels whose process of manufacture negatively impacts on food security in South Africa; and
- No more than 20% of the deductible expenditure incurred or 20% of the income received by the entity may be derived from transactions between connected persons who are residents.

Multiple benefits, multiple locations

Qualifying companies can benefit from:

- A reduced corporate tax rate of 15% (s12R);
- An accelerated 10 year tax allowance on buildings (section 12S of the Income Tax Act);
- VAT & customs relief (if located within a Customs-Controlled Area); and
- Employment incentive for employers employing low-salaried employees (below R60 000 per annum).

Currently, the following SEZs have been designated and Gazetted by Minister of Trade and Industry:

- Coega IDZ (Eastern Cape)
- Richards Bay IDZ (KwaZulu-Natal)
- East London IDZ (Eastern Cape)
- Saldanha Bay IDZ (Western Cape)
- Dube Tradeport (KwaZulu-Natal)
- Maluti-A-Phofung SEZ (Free State)
- OR Tambo IDZ (Gauteng)

Gazetted, but not yet approved by Minister of Finance

While the SEZs have been designated by the Minister of Trade and Industry, the Minister of Finance must also provide approval by notice in the Government Gazette for a an SEZ to be awarded the preferential tax treatment status.
It is unlikely that such approval by the Minister of Finance will be gazetted in 2017 nor in early 2018. Whilst such Ministerial approval may happen later in 2018, it is also not known whether this will be applied retrospectively.

So close but so far: what does this mean for an entity in a designated SEZ?

From our discussions with National Treasury, the approval process is still in its formative stages, thus taxpayers are advised to exercise caution when submitting their tax returns and to rather not utilize the 15% SEZ corporate tax rate (nor any other preferential tax benefits) until the official approval by the Minister of Finance has been formally gazetted.

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