

# The Special Economic Zones Regime

## Part II - Transitioning of Free Zone companies and regulatory issues

- Existing Free Zone companies can retain their Free Zone tax benefits up to December 31, 2019
- New entrant Special Economic Zone (SEZ) occupants must meet share capital and investment thresholds of US\$25,000 and US\$50,000, respectively
- Transitioning Free Zone companies are exempt from the investment thresholds if they opt into the SEZ by July 31, 2020
- No minimum threshold export requirement for SEZ entities

Part I of this publication outlined the wide range of tax concessions available for SEZ entities. Part II now explores the transitioning provisions for Free Zone companies and regulatory aspects of the regime.

### **Now that the Jamaica Export Free Zone Act is repealed, what is the status of Free Zone companies (i.e. Promoters and approved enterprises)?**

Existing Free Zone companies will retain their status for up to four years from the implementation date of the SEZ regime, August 1, 2016.

The SEZ Act states that during this four year period (ending July 31, 2020), all licenses, agreements, instruments or other documents granted under the Free Zone regime will continue in force, to the extent that they are consistent with the SEZ regime.

### **Will the existing Free Zone companies retain their tax incentives during the four year transition period?**

The SEZ Act allows existing Free Zone companies (Promoters and approved enterprises) to continue to enjoy the tax benefits of the Free Zone regime up to December 31, 2019, unless those companies opt into the SEZ regime prior to this date.

*There is an inconsistency in the SEZ law as, while the Free Zone status remains until July 2020, the tax incentives end 7 months earlier, by December 2019. We understand that the SEZ regulators are seeking to reconcile the inconsistent provisions.*

### **Can Free Zone companies transition into the SEZ regime and continue their operations as SEZ developers or SEZ occupants, as the case may be?**

Within the prescribed four year period, Free Zone companies may transition into the SEZ regime as follows:

- If it is a Promoter, by entering into a master concession or licensing agreement with the SEZ Authority to become an SEZ developer; or

- If it is an approved enterprise, by entering into a sub-concession with the developer to become an SEZ occupant.

If this is done, the Free Zone promoters or approved enterprises will be deemed to be SEZ developers or SEZ occupants, as the case may be, and enjoy the concessions available to these SEZ entities.

#### **What happens once the Free Zone Promoter or approved enterprise enters the SEZ regime?**

Once the Free Zone companies enter the SEZ regime, they will cease to enjoy the Free Zone tax benefits at that time, and will begin to enjoy the SEZ benefits in varying degrees.

In particular, where the Free Zone company enters into the relevant concession contract in 2016, 2017 or 2018, it will be entitled to the income tax benefits of the SEZ regime from January 1 of the respective year. This would include, the ability to claim Employment Tax Credits and other relevant credits and to pay tax-free dividends from January 1 of that year.

**The legislation is silent on the implications where the contract is entered into in the year 2019.** This may have been an oversight.

The GCT benefits under the SEZ regime, however, would not be applicable to the Free Zone companies until the beginning of the month following the month in which they entered into the applicable concession agreements.

*Most significantly, the Free Zone companies will no longer be entitled to tax-free income. However, entering the SEZ regime will entitle the Free Zone companies to new tax relief such as Assets Tax exemption, GCT zero-rating on telecommunication and electricity services received and certain transfer tax and stamp duty relief on land transfers, which they did not enjoy under the Free Zone regime. These tax concessions were outlined in Part I of this series of bulletins.*

#### **Is there any benefit to having the Free Zone companies transition into the SEZ regime within the four year period?**

Transitioning within the four year period provides the existing Free Zone companies with two identified benefits:

- They are deemed to have met the capital and investment requirements for entry into the SEZ regime and, so, the companies are relieved from these financial requirements (mentioned in further detail below); and
- It will, presumably, afford the Free Zone companies a simpler entry process compared to that which may be undergone by new entrants to the regime. This simpler process may merely be to enter into the relevant concession agreements. The details of the application process is likely to be detailed in the SEZ Regulations which were not yet published at the time of the issue of this bulletin.

#### **There are new share capital and investment requirements for entrants to the SEZ regime. Are transitioning Free Zone companies required to meet the share capital and investment requirements if they opt into the SEZ regime?**

Transitioning Free Zone companies which convert to the SEZ regime within the prescribed 4 year period ending July 31, 2020, are deemed to have met the share capital and investment requirements. Therefore, they do not have to modify their share capital or investment expenditure if they convert within the prescribed time.

If the Free Zone companies do not convert to the SEZ regime within this period, it appears that the new capital and investment requirements will apply.

## **What share capital or investment requirements are imposed for new entrants into the SEZ regime?**

New developers must have a minimum issued and paid up share capital of US\$1,500,000 and must make sufficient investment to accommodate at least 3 occupants. This investment requirement does not apply to developers of single-entity zones or specialized zones.

New occupants must have a minimum issued and paid up share capital of US\$25,000 and must invest at least US\$50,000 in the first year of operation in physical infrastructure such as building, equipment and machinery.

## **Are there special investment requirements for Micro Small and Medium Enterprises (MSME)?**

An MSME under the SEZ regime is a company with a maximum of 50 employees and annual sales revenue of up to US\$150,000.

An occupant which is a MSME must meet the above capital and investment requirements. However, as a concession, it may be approved under the SEZ for a limited period, if, in the SEZ Authority's view, it has development potential, and provided it has capital investments of at least US\$25,000 in the first year of operations. The special approval granted can last up to 4 years.

## **Is there a minimum threshold export requirement?**

There is no minimum threshold export requirement under the SEZ regime. This is a fundamental difference between the SEZ regime and the Free Zone regime, where 85% of sales were required to be for the export market.

## **What economic activities are allowed in the SEZ?**

The SEZ Act does not state the allowed activities, rather, it prohibits the following activities in the SEZ:

- (a) Extractive industries (mining, quarrying, or drilling for natural resources, excluding the lawful extraction of water for use by the occupant or developer;
- (b) Tourism services;
- (c) Telecommunication services;
- (d) Public utilities (excluding generation of electricity by the occupant or developer for use in the zone)
- (e) Financial services regulated by the Bank of Jamaica or the Financial Services Commission;
- (f) Construction services (unless part of a manufacturing process within the zone)
- (g) Real estate;
- (h) Health services, excluding research and development;
- (i) Catering services; and
- (j) Retail trade

The Minister may add other prohibited activities to the above list.

*It should be noted that no company in the SEZ can operate rental and non-rental activities through the same company.*

On the whole, existing Free Zone companies may embrace the SEZ regime since their current tax benefits under the Free Zone regime will be "grandfathered" up to December 31, 2019 and they will be exempted from the share capital and investment requirements imposed on new entrants, if they opt into the regime before August 1, 2020. The regime provides wider tax concessions than the Free Zone regime and significantly, imposes no minimum export requirement on entities in the industry. The investment thresholds, however, may prove to be barriers to entry for some new investors.

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