



Tax and Legal News

August 2020

Special Economic Zones – Alignment of sunset clauses

National Treasury and the South African Revenue Service (SARS) issued the 2020 Draft Taxation Laws Amendment Bill (draft TLAB) for public comment on 31 July 2020. Contained within these are amendments to sections 12R (s12R) and 12S (s12S) of the Income Tax Act No. 58 of 1962 (the Act), which deal with Special Economic Zones (SEZs).

First – let's go back in time

The SEZ tax regime was introduced in 2013 with s12R (which provides the qualifying criteria for a reduced 15% corporate tax rate) and s12S (which provides for accelerated capital allowances in respect of buildings owned and used by a qualifying company within a SEZ). The intention was that these provisions become effective during 2014, when the Special Economic Zones Act No.16 of 2014 (SEZ Act) came into operation.

Like most incentives, these provisions also had a sunset date. The incentives would be available for a period of up to 10 years, and cease to apply in respect of any year of assessment commencing on or after 1 January 2024.

Game changers

The SEZ Act only came into operation in 2016, while the gazettes approving specific SEZs were published in July 2018.

Currently, qualifying companies operating in the following approved SEZs may claim the preferential tax treatment:

- Coega (Eastern Cape)
- Dube Tradeport (KwaZulu-Natal)

- East London (Eastern Cape)
- Maluti-A-Phofung (Free State)
- Richards Bay (KwaZulu-Natal)
- Saldanha Bay (Western Cape)

Due to the above implementation delays, the sunset clauses in s12R and s12S essentially result in qualifying companies not being afforded the intended 10-year period over which the incentives were intended to be available.

Problematic subsequent amendments

S12R (which was accordingly amended in 2017 due to the delayed ratification of the SEZ Act) provides that it will cease to apply in respect of any year of assessment commencing on the later of 1 January 2024 or 10 years after commencing a trade in a SEZ.

Although welcomed, this resulted in the misalignment of the sunset dates of the SEZ tax provisions. S12S was not amended and ceased to apply for any year of assessment commencing on or after 1 January 2024.

Proposed further amendments – move quickly and accelerate investments

In order to provide clarity, the draft TLAB proposes to amend both s12R and s12S to have a single end date – both cease to apply in respect of any year of assessment commencing on or after 1 January 2028. This change would be deemed to have come into operation on 9 February 2016 – the date on which the SEZ Act came into operation.

The rationale for deciding on 1 January 2028 is that it allows the incentive to apply for a ten-year period from the approval of designated SEZs by the Minister of Finance (being July 2018).

Per the explanatory memorandum issued with the draft TLAB, the proposed amendments aim to incentivise potential qualifying companies to accelerate their investments and qualify within a shorter time period, with early movers (meaning those who already qualified in 2018 and who are using the incentive) benefitting for the full 10 years. However, as the incentive is now proposed to end in 2028, one wonders whether this revised sunset date will incentive those, who had not yet applied, to “accelerate their investments”. If a company was to qualify from 1 January 2021, it will only be able to benefit for 8 years at most, which, at a corporate tax rate of 15% (instead of 28%), may still be worth it.

Another question which arises is whether the company would be able to claim the remaining building allowances under one of the other sections in the Act, or whether the taxpayer would lose the remaining allowances.

Where to from here?

The draft Bill is currently open for comment and will be finalised once all consultations have been concluded. Based on history, the final Bill is most likely to be published in October of this year, with the signature and enactment thereof in December 2020/January 2021. KPMG will be making submissions regarding the draft amendments and will keep you posted on the final amendments made to this section.

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