Setting up your business in a Special Economic Zone (SEZs)

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Section 12R of the Income Tax Act 52 of 1962, as a consequence of an initiative by the Department of Trade and Industry, was introduced in 2014 to enhance trade through the Special Economic Zone Act 16 of 2014 and attract direct foreign investment.

The benefits

Companies qualifying under section 12R are not taxed at a rate of 28%. A reduced corporate income tax rate of 15% will apply as well as an accelerated depreciation allowance of 10% in cost of any new or unused buildings or improvement owed by the qualifying company. The benefits of sections 12R will be available until 1 January 2024 or expire 10 years after a company commences trade in a SEZ.

What is a qualifying company?

Only a qualifying company, that meets the defined criteria, is eligible to receive the benefit:

- carrying on business from a fixed place of business within a SEZ, or incorporated or effectively managed in

South Africa;
- carrying on business in a SEZ that is designated by the Minister of Trade and Industry and approved by the Minister of Finance in consultation with the Minister of Trade and Industry;
- carrying on business from a fixed place of business within a SEZ;
- at least 90% of the income of that company must be derived from the carrying on of business or provision of services within that SEZ; and
- less than 20% of the companys transactions are with connected persons that are RSA residents. Transactions with non-residents must be attributable to a permanent establishment in the Republic.

The following activities will not be classified as a qualifying company:

- Distilling, rectifying and blending of spirits (SIC Code 1101);
- Manufacture of wines (SIC Code 1102);
- Manufacture of malt liquors and malt (SIC Code 103);
- Manufacture of tobacco products (SIC Code 12);
- Manufacture of weapons and ammunition (SIC Code 252);
- Manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic.

The zones and approved activities

The following SEZs have been approved by the Minister of Finance for purposes of section 12R:

- Coega Special Economic Zone
- Dube Tradeport Special Economic Zone
- East London Special Economic Zone

- Maluti-a-Phofung Special Economic Zone
- Richards Bay Special Economic Zone
- Saldanha Bay Special Economic Zone

Conclusion

As much as there is tax benefit for companies to setup and trade in SEZs, companies must be mindful that the provisions of section 12R is only applicable for a limited period. Caution must also be exercised by companies as section 12R requires at least 90% of the income must be derived from the carrying on of business or provision of services within that SEZ.

Furthermore, companies must ensure that they limit the deductible expenses that they incurred during the year of assessment to 20%. Moreover, if income is received by or accrued to the company as a result of transactions with connected persons that are residents or with non-residents and those transactions are attributable to a permanent establishment in the Republic, this income must be limited to 20%.

Non-compliance with section 12R will result in tax at 28% instead of 15%.

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