ARTICLE | 21 MAY, 2025

Taxwise

THE 10-YEAR SPECIAL ECONOMIC ZONE INCENTIVE CAP

In this edition

Effective 27th December 2024, a new provision introduced a 10-year cap on the duration of incentives available to SEZ licensees. This article explores the expected implications of this change.

Jeremy Rupia | Associate

A. Introduction

Special Economic Zones (SEZs) were established to attract investment and stimulate economic development by creating a favorable operating environment for investors. Their incentive-driven structure has historically attracted significant foreign direct investment, contributing to job creation, infrastructure development, and overall economic growth. Through a combination of fiscal and administrative incentives, such as tax holidays, exemptions, and capital deductions, SEZs enable developers, operators, and enterprises to optimize growth opportunities and expand their economic footprint.

B. Background

The Special Economic Zones Act, 2015 established the legal framework for SEZ operations in Kenya, including the incentives and benefits available to licensed entities. Prior to the new amendment, SEZ licensees could enjoy reduced corporate tax rates for up to 20 years (excluding tax holidays) and other incentives on an ongoing basis.

According to the SEZ Regulations, a license remains valid indefinitely unless:

- The developer's or operator's land lease or concession expires;
- The relevant development agreement expires; or
- The license is revoked by the SEZ Authority.

This created a general understanding that incentives could be enjoyed throughout the life of the business, provided the license remained valid.

This created a general understanding that incentives could be enjoyed throughout the life of the business, provided the license remained valid.

C. 10 Year Incentive Cap

As part of broader legal reforms, the Business Laws (Amendment) Act, 2024 (No. 20 of 2024) introduced a provision limiting the duration of tax incentives for SEZ licensees—developers, operators, and enterprises—to a maximum of 10 years from the date of license issuance. This amendment took effect on 27th December 2024.
This shift has raised significant concerns among current and prospective SEZ participants.

The appeal of SEZs largely stemmed from the long-term tax benefits that supported strategic planning and de-risked large-scale investment. Limiting these incentives to 10 years could trigger a shift in investor interest and behavior.

The Government's stated aim is to increase tax revenue collection within a shorter time horizon. However, similar efforts in the past have led to unintended negative outcomes. For example, the 25% excise duty on imported fully assembled electric transformers, introduced on the same date, was intended to promote local assembly. Instead, it strained importers and destabilized local assemblers due to liquidity issues. As a result, a bill to reverse this measure was introduced on 11th March 2025, less than three months after its implementation.

Anticipated Implications of the 10-Year Cap:

- **Investment Planning:** Entities may redesign operations to maximize returns within the 10-year window, potentially affecting project timelines and scope.
- **Discouragement of Long-Term Investment:** Investors with long-term horizons may be deterred, as the post-incentive tax burden increases risk and costs.
- **Uncertainty for Existing Licensees:** The amendment's application to existing entities remains unclear, whether the 10-year count starts from license issuance or upon renewal, raising operational and financial planning concerns.
- **Operational Disruptions:** If retroactively applied, entities nearing the 10-year mark may face abrupt changes mid-project, risking delays or financial loss.
- **Compliance and Tax Planning Pressures:** Sudden loss of exemptions may lead to compliance challenges and necessitate aggressive tax planning to manage cash flow impacts.
- **Acceleration of Project Execution:** To optimize returns within the limited window, entities may fast-track implementation, potentially leading to rapid—but possibly unsustainable—sectoral growth.
- **Relocation or "SEZ Hopping":** To renew access to incentives, some businesses might consider relocating between SEZs, undermining long-term stability.

D. Conclusion

While the Government's intention is to broaden the tax base and support long-term GDP growth, the 10-year cap risks undermining the original purpose of SEZs. The new policy could disrupt investor confidence and operations, potentially requiring further government intervention to maintain the SEZ program's attractiveness.

Moreover, the absence of clear transitional guidelines and implementation protocols creates uncertainty and threatens Kenya's strategic position as a destination for regional investment through SEZs.

LET'S TALK

For more information or professional advisory on any other tax matter kindly contact your regular Taxwise Africa Analyst or the contacts below:

(020) 202 5320

info@taxwiseconsulting.com

Taxwise Africa Consulting LLP

Linkedin

Twitter

Taxwise