

Analysis of opportunities under the Special Economic Zones Act

Overview of the Act

The Special Economic Zones (SEZ) Act (herein referred to as the Act) was enacted and became effective in December, 2015.

The Act provides that an SEZ, as declared by the Cabinet Secretary for Industrialization, to be a designated geographical area where business enabling policies, integrated land use and sector-appropriate on-site and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis.

This designated area is also deemed to be outside the customs territory in so far as import duties and taxes are concerned.

Currently there are a number of mooted SEZs. The planned public SEZs are Dongo Kundu in Mombasa and Konza City. There are three private SEZs that have been gazetted and are in the construction stage in Machakos, Kiambu and Uasin Gishu Counties.

The business opportunities under this Act remain largely unexploited.

Qualifying sectors under SEZ

The SEZ provides a wider range of qualifying activities compared to the Export Processing Zones regime. The following are the activities or businesses that qualify for SEZ:

- 1) Industrial parks;
- 2) Freeports;
- 3) Free trade zones;
- 4) Information communication technology parks;
- 5) Science and technology parks;
- 6) Agricultural zones;
- 7) Livestock zones;
- 8) Regional Headquarters;
- 9) Tourist and recreational centres;
- 10) Conference and conventional facilities; and
- 11) Business service parks.

Benefits under the SEZ Act

Some of the benefits under the SEZ Act include:

- i. Preferential tax regimes for all SEZ transactions and operations. These include 10% corporate tax rates, lower withholding taxes rates or exemption, VAT zero rating of goods and services supplied to SEZ entities and 100% to 150% investment deduction for buildings and other capital expenditures.
- ii. Other exemptions – stamp duty, payment of advertisement fees and business service permit fees levied by County Governments, rent and tenancy controls, among others.
- iii. Work permits for up to 20% of the total work force, with additional available on request.
- iv. Other benefits - Protection of property against nationalization and expropriation; repatriation of capital and profits without any foreign exchange impediments; and protection of intellectual property.

Possible business opportunities

Based on our review of the Act and consultations with the SEZ Authority, some of the businesses opportunities that we have identified include the following:

- a) *Freeports / Free Trade Zones* – The current customs rules make it difficult for local and international dealers of merchandise to be able to import, store and sell goods in the region. Freeports / Free Trade Zones will help overcome this problem.

Major imported goods into the region e.g. cars could be stored by dealers in the Freeports / Free Trade Zones (without paying duties and other import taxes and levies) for sale in the Kenyan market and/or Eastern, Southern Africa regions and beyond. Therefore, Kenyan entities would now be able to operate as major distribution and transshipment centres for goods imported and sold in Kenya and the region.

- b) *Warehousing and supply chain management solutions* – Storage and handling of goods imported into or exported from Kenya pre and post-customs clearance would qualify as SEZ enterprises, especially under Free Trade Zones regime.

Local and regional businesses will be able to defer payment of taxes, duties and levies applicable on imported goods until those goods are entered for use in Kenya or exported free of these duties, taxes and levies to other regions.

- c) *Property developers and managers* – Supporting facilities to SEZs like residential houses and hotels would qualify for SEZ incentives and benefits.

Generally, SEZ developers and operators could be entities/individuals engaged in the building and managing SEZ properties, but not necessarily involved in the running of business as SEZ enterprises. Building an SEZ would make your property more attractive since businesses that set up in your property would qualify as SEZ and enjoy the huge SEZ benefits and incentives.

- d) *Manufacturing* – There opportunities for value addition activities to Kenyan produce to be licensed as SEZ. The SEZ could be their current business locations or new locations. Also, there are opportunities for importation of goods where minor transformations or post-manufacturing activities are required. These activities could include re-packaging, storage, labelling and re-processing.

There are also opportunities for toll manufacturers. These are manufacturing entities that are primarily involved in providing services of manufacturing, value-addition or processing of goods to finished products for other parties.

- e) *Hotels, recreational and conference facilities* – There are opportunities to set up hotels, recreational and conference facilities as SEZ or within other SEZs to complement the duty-free shopping, distribution and transshipment hubs like the famous Jebel Ali Free Zone.

- f) *Regional headquarters* – Companies with regional/global operations can set up their regional headquarters in the SEZs benefiting

from the relaxed work permit rules, lower taxes among other benefits.

Tax planning opportunity

There are various tax benefits and incentives for SEZ entities. This provides businesses engaging in qualifying activities with additional opportunities for tax planning to reduce the tax cost of their businesses.

There are opportunities to either convert your current business location to an SEZ, setting up in the already gazetted SEZs or developing your own SEZ and applying for the required licenses and approvals.

Taking advantage of this tax planning opportunity can lower the tax cost of your business, the cost of your goods or services and enhance shareholders' earnings.

We can assist you

Stratton Consulting is assisting businesses explore and pursue SEZ opportunities. We also assist businesses to set up and structure their operations under SEZ by doing the following:

- Preparing a comprehensive analysis of how your business fits into the SEZ regime;
- Providing the ideal structure for the SEZ operations;
- Preparation of feasibility studies;
- Advising on the documents and information required;
- Drafting and submitting an application for gazettment of land that complies with the SEZ Act to the SEZ Authority;
- Following up on approvals from relevant Ministries and regulatory agencies;
- Assisting with application for license(s) for a SEZ developer, enterprise and/or operator; and
- Assisting with the transition to SEZ and operational support under SEZ regime for your business.

Let's talk SEZ matters

For discussions on SEZ matters, please contact Johnson Ngila on:

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