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Polish Investment Zone—New Tax Incentive for Investors in Poland

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The Polish government has announced its plan to introduce a new mechanism supporting investments in Poland. This new incentive is going to replace the Special Economic Zones ("SEZ") that have been in operation for more than 23 years. However, a recent draft act on the Promotion of New Investments does not dispel all doubts about the future of investment incentives in Poland.

According to the Deputy Prime Minister Mateusz Morawiecki's declaration, the new Polish Investment Zone will result in "every square kilometre of Poland becoming an attractive investment zone".

Why Make Changes at all?

The weaknesses of the current system are acknowledged both by the legislative and entrepreneurs. The proposed regulations serve as a response to the need of adjusting recent rules of the tax incentive for new investments to the changing socio-economic realities.

This especially applies to the complicated and time-consuming procedure of including new areas in the boundaries of SEZ, whereas the possibility of obtaining a tax incentive is strictly linked with an investment realized within a specific and already set-up SEZ area. Furthermore, the current regulations stipulate that SEZ will operate until the end of 2026. The postponement of this date (which has already happened twice)

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falls within the competence of the Council of Ministers. Still, from the investors' point of view, this causes uncertainty about the length of the period in which they can benefit from the public aid. The imminent end date of SEZ can pose a barrier for new big investments.

Last but not least, there are signals on the government side that SEZ proved to be insufficient instruments and some regions of Poland have not benefited from their functioning. In addition, SEZ do not take into account the goals and objectives of the medium-term development strategy of the country as defined in document Strategy for Responsible Development.

Improving SEZ

In response to the problems identified above, the project provides three fundamental changes.

(i) First of all, a complete *departure from territorial restrictions*. The new tax incentive will be available to entrepreneurs from all over the country, regardless of their place of businesses. This should give more freedom in choosing where to invest as well as streamline the process of granting public aid to investors. Still, the location of the investment will affect the amount of the tax incentive.

(ii) Another fundamental change would be *determining of the period for which the tax exemption is granted to the entrepreneur*. The project assumes that the support decision (granting the tax incentive) will be issued only for a fixed period, not shorter than 10 and not longer than 15 years. If a new investment is located within the boundaries of the currently operating SEZ, the decision to support the new investment will be valid for 15 years.

(iii) In addition, *the decision to grant support will depend on brand-new factors*. The new criteria will concentrate on the goals and objectives of the medium-term development strategy and the criteria of sustainable development. These criteria will be implemented by diversifying the condition for minimum investment costs which will vary depending on the size of the entrepreneur and the unemployment rate in the location of the investment.

Further conditions (i.e. eligibility criteria) for granting support will be described in detail in a separate Regulation, which should be issued by the Council of Ministers. However, the project of that Regulation is yet to be made public.

According to the government's initial announcements, all investments will have to meet two criteria. The quantitative criterion regards specific investment outlays depending on the unemployment rate and the size of the business. The qualitative criterion takes into account the priorities set in the Strategy for Responsible Development. This means factors such as structural development (employing specialized staff or high-paying jobs), scientific development (depending on R&D activities) sustainable development (location of the investment) and HR development (additional benefits offered to employees).

Support Provided by the Project

The discussed public aid mechanism will be eligible to entrepreneurs who set-up a new investment, and it will be provided in the form of a tax exemption in income tax – both corporate income tax ("CIT") and personal income tax ("PIT"). The essence and technical rules of calculating this tax exemption are similar to the current rules provided for SEZ.

The amount of the tax exemption will be calculated on the basis of the so-called "eligible expenses" of investment. Eligible expenses may be calculated as costs of a new investment incurred during the period of validity of the support decision. Alternatively, such costs can be determined on the basis of two-year labour costs. The proposed solutions should therefore provide the opportunity to benefit from a new tax incentive, both for those who plan to make a tangible investment by setting up a new factory, and those who choose the new services sector, by creating, for example, shared service centres.

The support for new investments will also be provided to entrepreneurs in the form of services provided by the area managers (i.e. entities managing a SEZ). The area managers will provide free training and consulting services, as well as, for instance, assistance in contact with administration.

Sealing the Tax Exemption

Entrepreneurs can be blinded by the fact that the project comes with its own General Anti-Abuse Rule ("GAAR"). Such regulations are puzzling, seeing that GAAR was introduced to Polish Tax Code on July 15, 2016 and, in many aspects, could apply to tax incentives as discussed. It should be viewed as yet another example of the Polish government's recent actions aimed at sealing the tax system.

Nevertheless, the *GAAR provided by the project shall apply to tax exemptions resulting from the new incentive, as well as to the taxpayers already operating in SEZ*. The effects of using the clause would be very severe. The taxpayer will lose the right to tax exemptions and will have to pay all due income taxes. The tax credit can be lost, e.g. if the exempted income is obtained due to the conclusion of an artificial contract or the performance of artificial legal actions while the main purpose of these activities was exemption from tax. The wording of the clause and the catalogue of situations in which it could potentially apply cause serious doubts. It is hoped that as works on the project progress, this issue will be addressed, debated and sufficiently developed.

In addition, as if the restrictions mentioned above were not enough to raise doubts on the part of entrepreneurs considering investments in Poland, the government has created yet another obstacle. To further limit the possibilities of granting public aid, the Council of Ministers may, at the request of the Minister responsible for the state budget, suspend the issuance of support decisions for a given budget year. Such a request may arise as a result of the expected expenditures and deficit for that given year.

Polish Investment Zone in Next Two Months?

The project is at an early stage of parliamentary work. Thus, it may be expected that some of its provisions will be modified. In some aspects this is definitely expected by the entrepreneurs. Nevertheless, according to the government's announcements, the Polish Investment Zone will come into effect at the beginning of 2018.

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