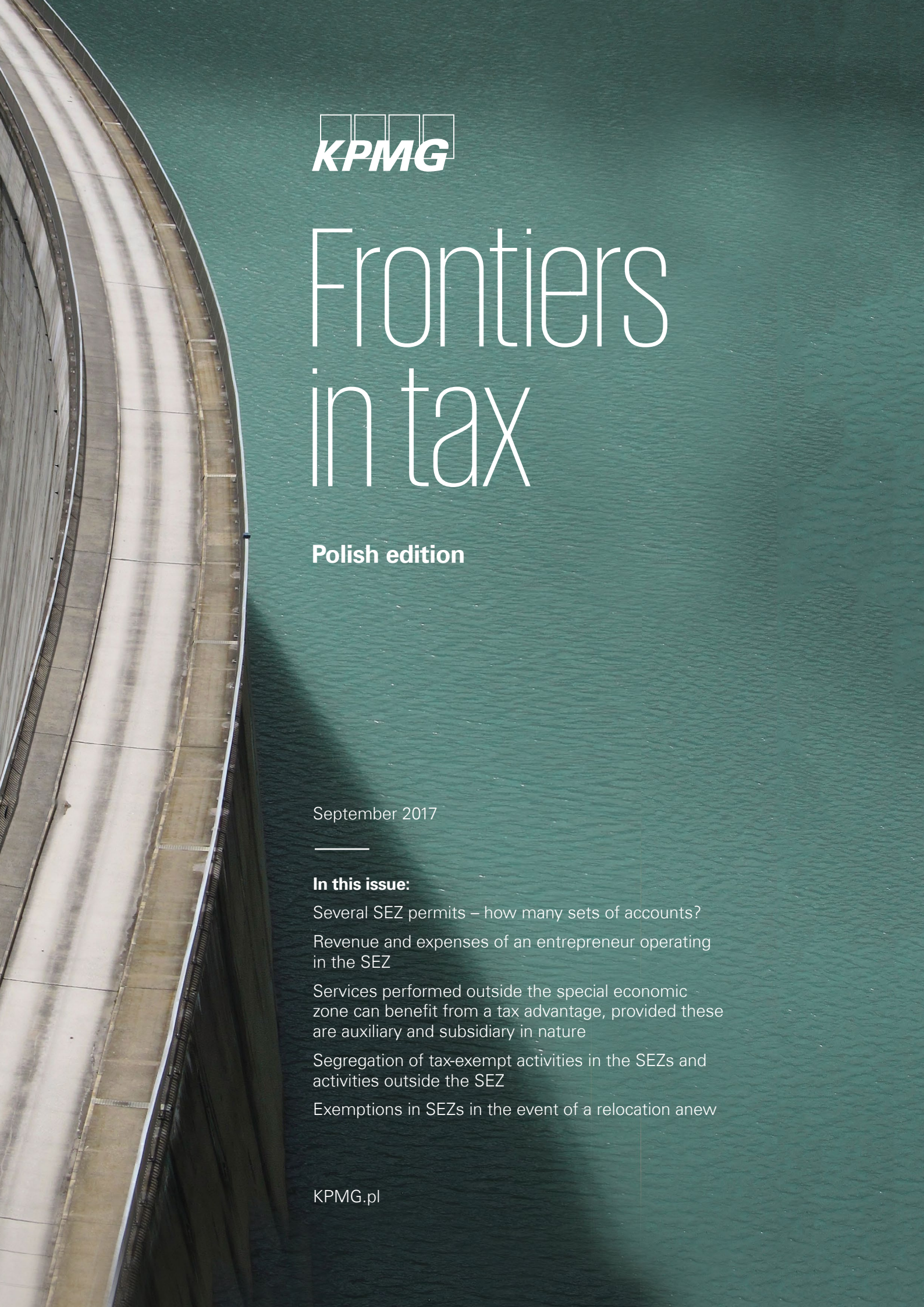

KPMG

Frontiers in tax

Polish edition

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In this issue:

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Introduction

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From the standpoint of economic growth and job creation, investments from Polish and foreign companies are very important. There are a number of factors that determine the choice of a location. For years now, special economic zones ('SEZs') have attracted investors through tax incentives.

Investing in SEZs is in many cases attractive as it offers the possibility of securing an income tax exemption, this in spite of the decline in the intensity of State aid since mid-2014.

However, the tax settlements of SEZ-located companies raise practical problems and doubts. Through this latest issue of the Frontiers in Tax magazine we seek to familiarise you with the issues that, in our opinion, are most challenging for the companies operating in SEZs.

The presently announced plans for the introduction of changes in the system of investment incentives in place now may make investments in special economic zones – understood as a delimited tax exemption regime – even more popular among economic operators. That is why a review of the tax issues that constitute a challenge for the companies who chose to start their operations in SEZs and to benefit from the attendant income tax exemptions can be a worthwhile exercise.

I wish you a pleasant reading.

Several SEZ permits – how many sets of accounts?

The question of how tax accounts for calculating total income (or loss) and the income on activities carried out in a special economic zone on the basis of two or more permits should be maintained had not been a controversial one until recently. In 2015, however, tax authorities adopted first decisions which put in doubt the correctness of maintaining a single set of tax accounts by a taxpayer operating within the territory of special economic zone with multiple permits. Analysis of the positions tax authorities and administrative courts have been taking on the issue since then indicates that they have not been able to work out a uniform position, even though, to date, the Supreme Administrative Court had ruled on the matter twice.

Provincial administrative courts render contradictory verdicts

Some administrative courts for some time now have firmly held the position that every business permit is issued for the pursuit of a strictly-defined activity within the territory of specific special economic zone ('SEZ'). According to this position, each permit (for specific business activity conducted within the territory of SEZ) carries with it a specific limit of admissible aid (or maximum aid intensity) and hence when disclosing their income subject to exemption on account of it being generated within the territory of SEZ, a taxpayer holding several permits must calculate separately the revenue and expenses of the activities they conduct based on each specific permit. Recently, the Provincial Administrative Court in Poznań, among others, adopted this line of interpretation for the relevant regulations when it pointed out in the oral rationale of its judgment of 26 July 2017 (case no. I SA/Po 1355/16) that the taxpayer is required to maintain accounting records that meet the requirements of Art. 9(1) of the Corporate Income Tax Act (the "CIT Act"), that is to say, in a manner that allows for the separate determination of the income earned or the loss incurred for each of the permits held. Likewise, the same court stated in its judgment dated 2 February 2017 (file no. SA/Po 850/16) that the taxpayer was obliged to maintain accounting records in a manner that would enable the income to be determined separately for each of the economic activities carried out in the SEZ on the basis of a separate permit. The Provincial Administrative Court in Poznań pointed out that this was necessary in order to ensure the proper application of Art. 17(1) point 34 of the CIT Act.

It is interesting to note that the same court, even partially in the same composition, issued another judgment, dated 5 April 2017 (case no. I SA/Po 1303/16), in which it fully shared the position of a taxpayer appealing an interpretation of unfavourable tax regulations issued by tax authorities, in which judgement it pointed out that for the purpose of calculating the income (loss) subject to corporate tax and the income (loss) on the economic activity carried out within the territory of SEZ on the basis of relevant permits, the taxpayer will be permitted to maintain a joint single set of accounts for their exempted activity conducted on the basis of all their permits and a separate set of accounts for their activities subject to corporate tax. What is more, in the same judgement, the Provincial Administrative Court in Poznań cited the fact that these views were "repeatedly expressed in the current and uniform jurisprudence of the administrative courts," and enumerated, among others, the judgment of the Provincial Administrative Court in Wrocław of 16 June 2016 (case no. I SA/Wr 447/16); the judgmentof the Provincial Administrative Court in Łódź of 26 October 2016 (case no. I SA/Łd 646/16); the judgment of the Provincial Administrative Court in Gliwice of 7 March 2017 (case no. I SA/Gl 1194/16); and the judgment of the Supreme Administrative Court of 19 July 2016 (case no. II FSK 1849/14).

Tax authorities likewise lack a well-founded view on the correct way of maintaining accounting records for income tax purposes by taxpayers using more than one SEZ permit.

The interpretive position of tax administrations continues to change

Tax authorities likewise lack a well-founded view on the correct way of maintaining accounting records for income tax purposes by taxpayers using more than one SEZ permit. Until 2015, the position was uniform and confirmed the view adopted by taxpayers: that a company pursuing economic activity within the territory of SEZ based on two or more permits does not fall under the obligation of maintaining separate accounting records for each of those permits (see, for instance, the individual interpretation of the Tax Chamber in Bydgoszcz Director dated 21 August 2014, case no. ITPB3/423-228a/14/PST). Subsequent to that, the tax authorities' position on the issue reversed itself. For example, the Director of the Tax Chamber in Katowice, in the individual interpretation issued on 15 June 2016, file no. IBPB-1-3/4510-436/16/JKT, specified that an entrepreneur undertaking operations within the territory of SEZ will be obliged to maintain accounting records in a way that allows for the determination of the income earned or the loss incurred separately for each of the licenses held. The Minister of Development and Finance adopted a similar stance on the issue as he ex officio changed the previously-issued individual interpretations (see the individual interpretations of the Minister of Finance dated 7 December 2015, DD10.8221.142.2015.MZB and of 8 December 2015, DD10.8221.199.2015.MZB). However, recently, the position applied consistently since 2015 by the tax authorities issuing individual tax law interpretations had ceased to be homogeneous: we observe a resurgence of interpretations favourable to taxpayers, which negate the need for maintaining separate accounting records in respect of all individual SEZ permits (see the interpretations issued by the Director of the National Tax Information dated 11 May 2017, case no. 0111-KDIB1-3.4010.53.2017.1.JKT and 3 July 2017, case no. 0111-KDIB1-3.4010.150.2017.1.JKT).

Uniform jurisprudence of the supreme administrative court has not put an end to disputes

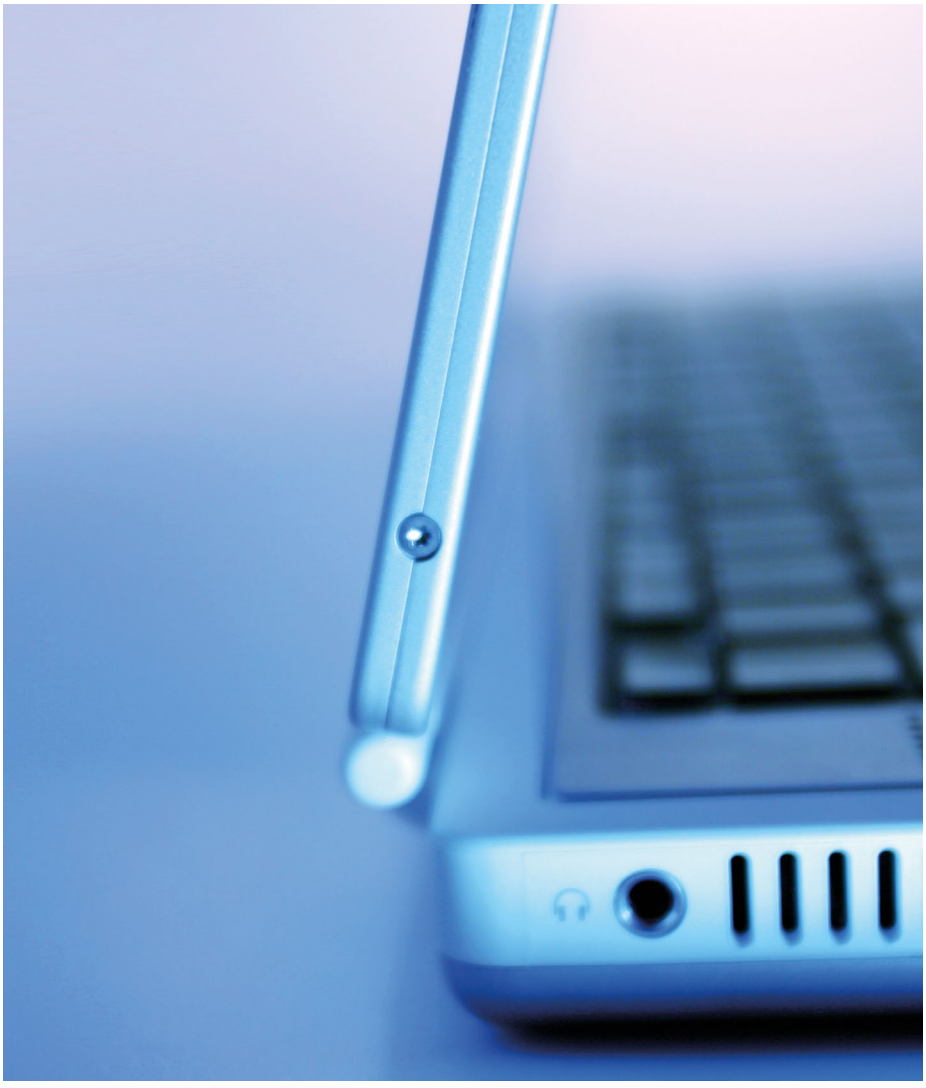
The uncertainties arising from the incompatible interpretations of the tax legislation that regulates the question of the accounting records to be maintained by taxpayers conducting activities within the territory of SEZ on the basis of two or more permits are to be dispelled by two recent rulings on the issue by the Supreme Administrative Court: the aforementioned judgment of 19 July 2016 (case no. II FSK 1849/14) and the subsequent judgement of 8 November 2016 (case no. II FSK 2230/14), which both point to the fact that there are no provisions which would impose on the taxpayer the obligation of segregating and assigning income at the level of each SEZ permit held.

In view of these numerous interpretative discrepancies, it is clear that the provisions governing the obligations of taxpayers operating in SEZs should be the subject of careful consideration. Bearing in mind the above, it should be pointed out that, in both their literal and teleological interpretation, the provisions of the Art. 9(1) CIT Act and the Art. 5(5) of the Regulation of the Council of Ministers of 10 December 2008 on public aid granted to economic entities operating pursuant to a permit for carrying out business activity within special economic zones require in the case of operation both within the territory of SEZ and outside the SEZ only that separate accounts be maintained for the exempt and the non-exempt activity. There is clearly no legal basis for the segregation of income earned under the respective SEZ permits as that income benefits from the tax exemption in its entirety. It is worth emphasising that tax regulations should be interpreted according to their strict sense, in keeping with the principle of in dubio pro tributario (meaning 'in case of any doubts, rule in favour of a taxpayer'). When interpreting the tax regulations in its

context, it should be pointed out that neither the provisions of the CIT Act nor those relating to the SEZs include any regulations that would impose on a taxpayer the obligation of maintaining separate accounts for the respective types of economic activity for which separate SEZ permits were issued.

Moreover, as the Art. 7(1), Art. 7(2), and the Art. 7(3) points 1 and 3 of the CIT Act state that for the purpose of determining their tax base (taxable income), a taxpayer is only required to correctly deduct the revenue and expenses of their SEZ-conducted activity, then the accounts the taxpayer maintains need only be sufficient to allow the determination of these values. Therefore, this being an appeal from the contrary, no need to determine these values for each permit respectively exists and the opposite claim constitutes an error in interpretation.

In light of the above, the opposite position taken by some tax authorities and administrative courts is not justified. Bearing in mind the fact that the jurisprudence of the Supreme Administrative Court has been relatively favourable to taxpayers' interests, it is to be hoped that the taxpayers will eventually receive an definite answer whether, when they develop their business and operate on the basis of more than one permit, they should maintain a single set of accounts or separate sets of accounts for the individual permits they hold.



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Revenue and expenses of an entrepreneur operating in the SEZ

Entrepreneurs considering the option of undertaking business activity in a special economic zone ('SEZ') are often surprised that not all of their income is subject to the SEZ-related tax exemption.

However, it is a rule that the income which is tax exempt under Art. 17(1) point 34 of the CIT Act (and Art. 21(1) point 63a of the PIT Act) is just such income as concurrently fulfills three key conditions: (i) it originates from economic activity conducted within an SEZ; (ii) it is generated on the basis of a permit; and (iii) its amount is limited to that allotted as State aid. Deviation from any of the above conditions will cause the settlement of the SEZ operator to include taxable income (from non-SEZ activity) in addition to their tax-exempt income (from SEZ-derived activity).

The practical consequences of the aforementioned deviation include the need to segregate the obtained revenue into that from SEZ-conducted activities (tax-exempt) and that from non-SEZ activities (taxed). It should be emphasised that the legislator provided only for these two revenue categories, in contrast with expenses. In addition to SEZ- and non-SEZ-incurred expenses, these may also include common expenses, which are accounted for using a relevant allocation key. Specifically, common expenses need to be assigned with the use of the revenue allocation key, which, according to Art. 15(2) and 2 of the CIT Act, is expressed by the following formula:

Classification of expenses into the common expenses category is allowed only if direct assignment to either SEZ or non-SEZ activities is not possible. Additionally, when calculating the revenue allocation key, it is important to eliminate the simplifications allowed by the Accounting Act, e.g. presentation of only the net balances of gains/losses on sale of fixed assets or exchange-rate gains/losses (except for the accounting method used in their calculation) as these may lead to incorrect calculation of the revenue allocation key.

How do we prepare our accounting systems for running business activity in an SEZ?

- The situation we encounter quite often in our practice is an accounting system that has not been adjusted to meet the challenges that operating a business in an SEZ poses. Appropriate advance setting of the accounting system and preparation of the chart of accounts before initiation of operations within an SEZ can translate into a significant reduction in the workload required for the correct calculation of net income from tax-exempt and taxable activities. For an SEZ operator, correct preparation of tax accounts depends on the efficient preparation of two separate sets of tax calculations. Thus, if the taxpayer fails to segregate their revenue and expenses in compliance with the rules outlined above at the book entry stage, the only solution left will be that of a detailed verification of all entries in the result accounts and their manual ex-post allocation.
- Development of a chart of accounts that, at the level of analytical accounts, will allow for the segregation of revenue and expenses into appropriate categories;
- Leaving the chart of accounts unaltered, yet providing each account posting to result accounts with an additional parameter which signifies its allocation into the appropriate revenue or expense category.

Discounting State aid

In order to benefit from the tax exemption of the activities conducted within the territory of an SEZ, the interested party needs to incur investment expenditures or be an employer there. The higher of these two values is multiplied by the appropriate State aid rate in order to obtain the value of tax subject to exemption. In practice, utilisation of thus calculated State aid limit is a long-term process spread over many years, equivalent in time to that of

$$\text{SEZ Activity Allocation Key} = \frac{\text{SEZ Generated Revenue}}{\text{SEZ Generated Revenue} + \text{Non SEZ Generated Revenue}}$$

$$\text{Non SEZ Activity Allocation Key} = 1 - \text{SEZ Activity Allocation Key}$$

incurring of investment expenditures (or employment costs). In order to maintain comparability between the incurred amounts of expenses and the value of the granted exemption, the tax authorities introduced the obligation of discounting of both the granted State aid and the incurred expenses. In economic terms, the expenditure incurred in a later period will be worth less than the expenditure incurred earlier.

As a result, in order to calculate the real value of the received tax exemption and the degree of its utilisation, the value of eligible expenses and the tax exemption must be discounted as of the date of issuance of the permit to operate in an SEZ. In practice, the discounting is carried out with the aid of a discounting table compliant with the requirements indicated by the legislator.

At each tax-year end and the attendant determination of tax liability, the entrepreneurs operating in SEZs are required to verify whether they are not exceeding the State aid limit granted them (based on the discounted values of their eligible expenditures and State aid).

Date	Discount rate	Annual rate	Monthly rate	Expenditure incurred during the period	Number of months	Discount factor in the period	Discount factor	Discounted value	Value of discounted investment expenditures (CUM)	State aid received – CIT	Discounted value of the aid
09.2013											
10.2013	4,18%	0,0418	0,0035		1	0,9965	0,9965				
11.2013	4,18%	0,0418	0,0035		2	0,9965	0,9931				
12.2013	4,18%	0,0418	0,0035		3	0,9965	0,9896				
01.2014	3,75%	0,0375	0,0031		4	0,9969	0,9865				

Source: KPMG's executive summary

Summary

Entrepreneurs deciding to operate their business in an SEZ should bear in mind that, along with the evident benefits of running such an activity, they need to take into account a number of additional formal requirements, including, among others: the mentioned necessity of segregating revenue and expenses, and the requirement of discounting the obtained State aid and their eligible expenditures. Hence, we recommend that before you decide to locate your business in an SEZ, we advise you to consult specialists who can give you a detailed presentation of all aspects of running such activities and help you prepare for the challenges ahead.

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Wrocław office

Services performed outside the special economic zone can benefit from a tax advantage, provided these are auxiliary and subsidiary in nature

The most recent string of decisions by the Supreme Administrative Court confirm that the entire income from the sale of goods produced within the territory of special economic zone will be subject to income tax exemption, which also includes the situation in which a company operating within the territory of a special economic zone performs subsidiary services (or uses such services) outside the special economic zone.

The tax authorities take a restrictive stance

The tax authorities have not been generally favourable to taxpayers in this regard and – despite favourable jurisprudence of the administrative courts on the matter – have consistently held that the performance of some activities within the production process outside the territory of the special economic zones ('SEZs') affects the amount of the SEZ-related exemption vested with an economic entity on the basis of a permit. What this means is that the income generated through the sale of the products which corresponds to the phase of production executed by external service providers or outside the SEZ is excluded from tax-exempt income. Such a position was adopted, among others, by the Director of the Tax Chamber in Katowice in an individual interpretation issued on 4 May 2016, IBPB-1-3/4510-99/16/IŻ, which indicated that in order for a production process to be recognised as an activity carried out within the territory of the SEZ by a taxpayer being a holder of the SEZ permit, the same process needs to be executed by that taxpayer rather than by a subcontractor, be it in part, and that the activities that meet the criteria of subsidiary activity are those which enable or facilitate the execution of the primary processes, such as: the procurement of energy, tools and equipment, or packaging and storage of the products manufactured within the territory ofSEZ (see the individual interpretations issued by the Director of National Tax Information on 9 June 2017, file no. 0111-KDIB1-3.4010.113.2017.1.JKT, and 23 March 2017, 2461-IBPB-1-2.4510.20.2017.1.AK).

The courts understand economic realities

However, in issuing such decisions, the tax authorities do not take into account the argumentation raised repeatedly by the administrative courts adjudicating on similar cases: that an economic entity operating within the territory of SEZ cannot be expected to artificially separate some small part of its production process solely on the grounds that it uses subcontractor services or provides some auxiliary services outside the territory of the SEZ. The courts have repeatedly emphasised that the production processes in the present economic realities are highly specialised and therefore the use of goods and services provided by competent specialised entities is a necessity; thus, so long as what is carried out outside the SEZ is an activity subsidiary to the activity specified in the permit obtained by a business entity and carried out by it within the SEZ, that fact should have no bearing on the amount of the entity's income tax exemption.

The most recent of the relevant rulings issued by the Supreme Administrative Court (14 June 2017, file no. FSK 1438/15) pertained to a steel structure fabricator operating within the territory of SEZ. As part of their general contracting projects, the company would, among other things, transport, assemble and install fabricated steel structures on site, usually outside the SEZ. In their claim justification, the company indicated that installation of the structures they manufactured should be treated as an integral part of the service they provide to the customer, this in view of the fact that only the manufacturer, being an entity with the relevant know-how, could provide the assembly services compliant with the relevant building standards, safety rules and warranty conditions. The Minister of Finance concluded that since neither transport nor assembly (installation) services had been listed in the company's permit to operate within the SEZ, then income on the rendered transport and assembly (installation) services could not be tax-exempt under the Art. 17(1) point 34 of the Corporate Income Tax Act ('the CIT Act'). Unable to accept that position, the company appealed against the interpretation to the Provincial Administrative Court in Cracow. The court fully agreed with the claimant's position and repealed the Minister's interpretation, pointing out that the tax administration's argument

According to the tax authorities the income generated through the sale of the products which corresponds to the phase of production executed by external service providers or outside the SEZ is excluded from tax-exempt income.

alleging lack of permits for provision of transport or assembly services had been illogical, since the essence of transport and assembly services was that they were carried out largely outside SEZs. Thus, in the opinion of the provincial administrative court ('PAC'), it did not matter whether the company had a permit mentioning transport and/or assembly services, because the matter related to the assessment of whether such auxiliary activities formed part of the tax-exempt manufacturing activity carried out within the territory of SEZ. In the justification, PAC pointed out that since the value of the goods represented about 90% of the total price while the value of the transport and assembly services another 10%, and that since the warrantee for the goods delivered to the customer depended on the conditions of the transport and assembly services supplied at the total price of the product provided by the manufacturer operating within the SEZ, then the value of the services of assembly and transport to the place of their final destination, which did not constitute any significant share of the delivered goods' value, was an integral part of the business carried out within the SEZ, within the meaning of the Art. 17(1) point 34 of the CIT Act. The Supreme Administrative Court affirmed this position of the aforementioned PAC fully and stressed in its decision that the transport and assembly services linked with the installation of structures that, objectively, had to be done outside the SEZ, were indeed auxiliary activities, because there was a strict and indissoluble functional relationship between those activities and the company's core business, and therefore they were an integral part of the SEZ activity.

The aforementioned sentence of the Supreme Administrative Court fully confirms the currently held and well-established line of judicial decisions in the field; we could cite the following decisions: of PAC in Rzeszów dated 8 June 2017, case no. I SA/Rz 263/17; of PAC in Lublin of 17 March 2017, case no. I SA/Lu 58/17; of PAC in Łódź of 15 March 2017, case no. I SA/Ld 1109/16; of PAC in Wrocław of 8 December 2016, case no. I SA/Wr 963/16; and the earlier rulings of the Supreme Administrative Court of 10 September 2015 (II FSK 1766/13) and of 27 August 2015 (II FSK 541/14).

Favourable case law has so far failed to eliminate discrepancies

Despite the aforementioned body of taxpayer-favourable case law, economic entities remain uncertain as to the consequences of their broader use of external service providers or their own performance of services closely related to their SEZ-manufactured products outside the territory of SEZ. This is of particular significance given the growing interest of the tax authorities in the business activity carried out within special economic zones and in the way public aid, in the form of income tax exemptions, is appropriated.

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Segregation of tax-exempt activities in the SEZs and activities outside the SEZ

Neither the rules nor practice preclude the taxpayer from doing business partly as a Special Economic Zone confined tax-exempt activity and partly as a taxable activity conducted outside a Special Economic Zone. However, it is important to bear in mind the obligations involved and to properly disclose and segregate the flows of those two separate parts of the business.

When conducting business activity both in a Special Economic Zone (or an 'SEZ') and outside an SEZ, or within the scope indicated in an SEZ permit and beyond the scope of such a permit, it is crucial to determine which activity and to what extent can benefit from the income tax exemption.

In the case of an inspection of an entrepreneur operating in a Special Economic Zone, it is precisely this question that will be the subject of verification by the tax authorities.

What is the approach that ensures the correct segregation of the business activity benefiting from a tax exemption from that which is taxable?

The activity exempt from income tax is:

a) the activity specified in the SEZ permit and

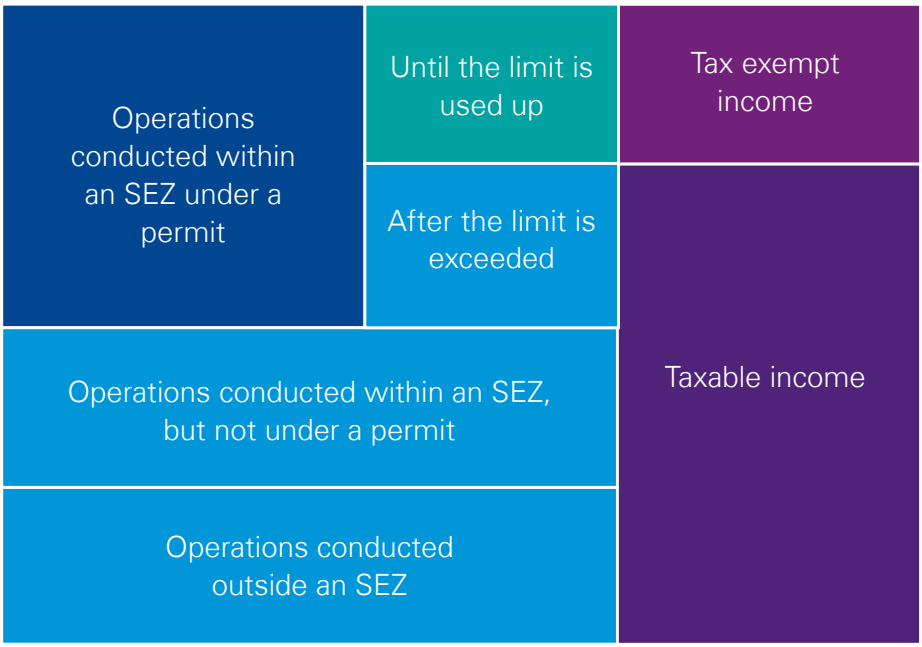
b) being actually conducted within an SEZ.

Segregation method

According to § 5(5) of what is referred to as the SEZ Regulation,[1] the income tax exemption, which is either based on the value of a new investment or related to the creation of new workplaces, applies exclusively to activity carried out within an SEZ.

The regulation specifies that whenever the economic entity also carries out business activity outside an SEZ, the activity carried out within an SEZ must be organisationally separated, and the exemption amount is to be calculated on the basis of data relating to the organisational unit carrying out business activity solely within an SEZ.

The business activity carried out outside an SEZ should be verified in terms of whether it actually meets the criteria of such an activity (e.g. services of a subcontractor operating outside an SEZ do not meet those criteria).



[1]Regulation of the Council of Ministers of 10 December 2008 on public aid granted to economic entities operating pursuant to a permit for carrying out business activity within special economic zones

In practice, however, the regulation specifies neither the structure nor the expression of the segregation in question.

In general, it is indicated that the segregation manifests itself through:

A. **Accounting separation** – i.e. the separation of revenue and expenses in the accounting books (e.g. maintaining off-balance sheet accounts or a relevant chart of accounts, or the use of different tags for entries attributed to respective activities);

B. **Asset separation** - i.e. the separation of fixed assets (e.g. attribution of fixed assets solely to activities benefiting from income tax exemption or to taxable activities);

C. **Personnel separation** - i.e. identification of the employees active within the business activity field benefiting from income tax exemption as opposed to those working exclusively within the line of taxable activity.

Such an organisational separation is expected to enable the correct determination of tax revenue from business activity conducted within an SEZ and within the scope provided for under a specific SEZ permit.

Flows between taxable and tax-exempt business activity

Thus, we can have a situation in which a single company conducts two business activities, which, from the vantage point of the income tax obligation, need to be viewed separately.

The figure below illustrates operations of one such entity.

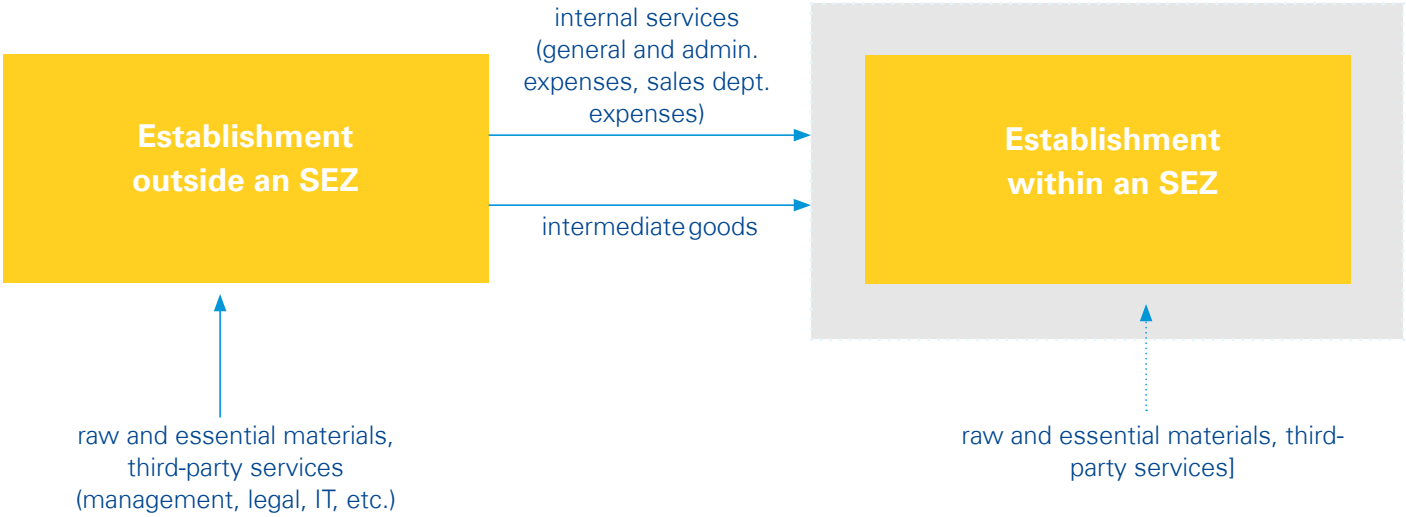
In such a case, the aforementioned SEZ Regulation indicates that when determining the income tax exemption amount vested with an economic entity operating within an SEZ through its organisational unit, the rules of transfer pricing between related parties regarding the ability to estimate income should be applied (i.e. Article 25 of the Personal Income Tax Act and Article 11 of the Corporate Income Tax Act).

The regulation thus empowers the tax authorities to verify the terms on which flows between the income tax-exempt and the taxable business activities take place.

In this case, the economic entity needs to determine income and follow the rules they would normally adopt when transacting with an independent entrepreneur. These market price based rules are there to ensure a fair attribution of revenue and expense values to the taxable and tax-exempt business activities respectively. Otherwise, there would conceivably be room for understating the revenue allocated to taxable activity.

Thus, in order to correctly determine tax-exempt and taxable income in the case of an economic entity operating organisational units located within as well as outside an SEZ, it is necessary to analyse the financial flows between those units.

Such an organisational separation is expected to enable the correct determination of tax revenue from business activity conducted within an SEZ and within the scope provided for under a specific SEZ permit.



Source: KPMG's executive summary

Such an analysis can include the following elements:

1. determination of internal flows between the organisational units operating within and outside an SEZ (whether they occur; and if so, what is their nature, frequency – whether they are one-offs or form an essential part of a production process);
2. identification of the essential functions and nature of the flows for each unit and adoption, on that basis, of the valuation method for those flows; and
3. correct allocation of those flows.

Consequently, in the event of a dispute with the tax authorities, it is worthwhile for the entrepreneur to have an analysis that captures the set flows (allocations) between the respective organisational units of the business benefiting from income tax exemption and those subject to taxation, which testify to the application of market conditions and prices.

Clearly, it is important to establish a system of identification and accounting for the activities subject to tax exemption on account of them being carried out within a Special Economic Zone, even at an early stage of the business activity, and thus avoid doubts and problems in the future.

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Exemptions in SEZs in the event of a relocation anew

Even though the new EU State aid rules have been in effect since mid-2014 and their implementation into the Special Economic Zones Act ('SEZs Act') took place in early 2015, their practical implementation in many areas still calls for clarification or explanation. This is due to the fact that EU legislation is framed in very general terms, with the detail of its implementation left to the Member States. However, experience shows that Member States, including Poland, transpose EU legislation directly into their national primary and secondary legislation, and leave the often difficult task of interpreting it to economic operators themselves.

Application for State aid

If an economic operator ever sought aid other than tax exemption in the SEZ, e.g. an EU grant, they will have certainly encountered the concept of application for State aid. In the case of aid schemes (i.e. when not dealing with ad hoc aid), commencement of a project is conditional on submission of an application for State aid.

For many years, the economic operators benefitting from SEZ-related tax exemptions did not have the issue explicitly explained to them. The SEZ permit-granting procedure included such documents as the letter of intent, the investor submission and the business plan. None of these documents, however, was an application per se. The economic operators deciding when to start a project would always rely on the permit issuance date. This stemmed from the provisions of the Regulation on State aid granted to entrepreneurs operating on the basis of a permit to pursue an economic activity in special economic zones, which indicated that the expenditures eligible for aid were the investment costs incurred within the territory of an SEZ over the period of permit validity, i.e. from the date of permit issuance.

It is only since 6 January 2015 that the provisions of the SEZs Act have been supplemented with a clear indication that the economic operator would need to submit their application for State aid as part of a negotiated or bargaining procedure. At the same time, the provision limiting eligible expenditures to the permit validity period was upheld. What that means for economic operators is the following:

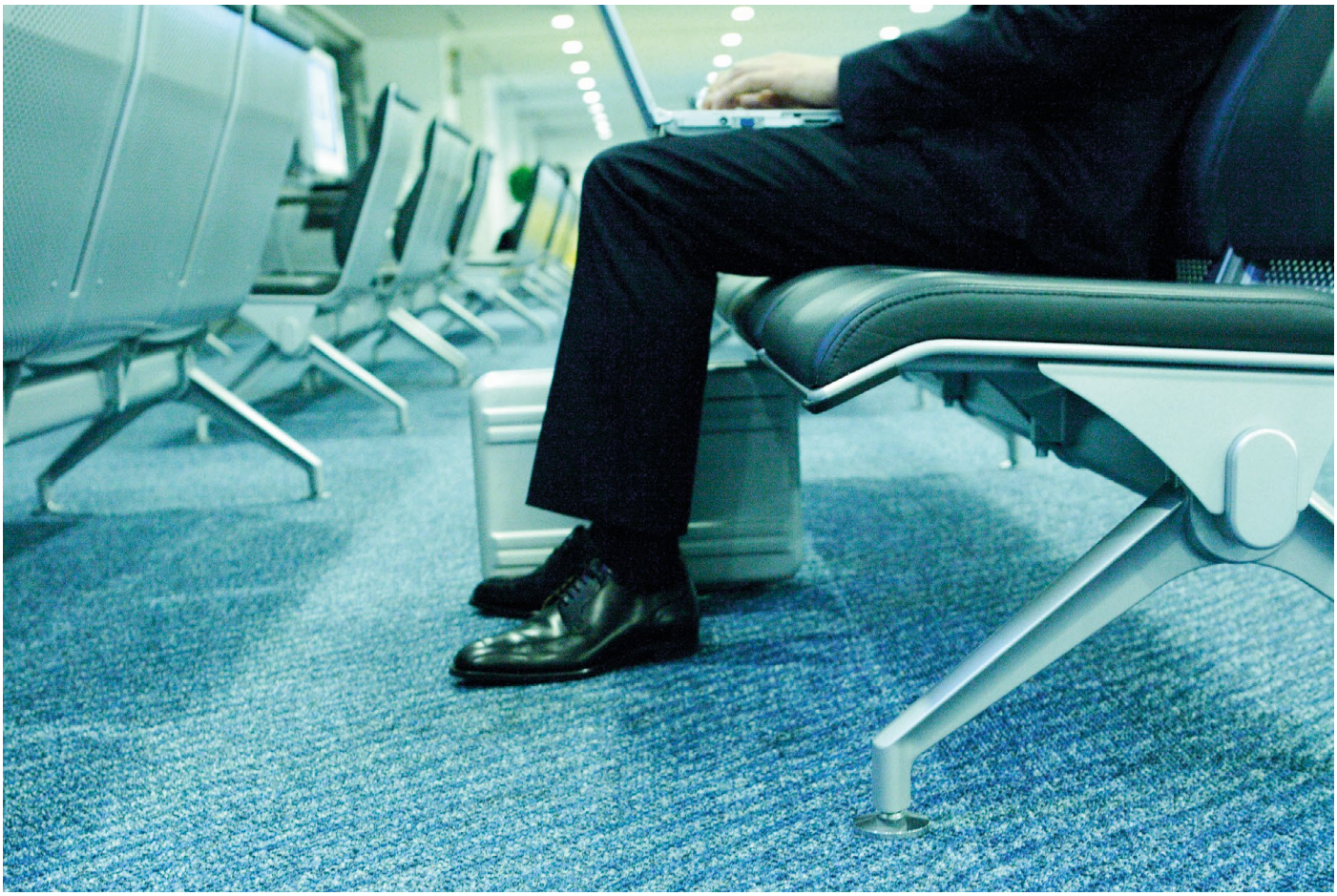
1. Upon submitting their application for State aid (through negotiations or bargaining), they may, e.g. place orders and commence construction works; in principle, they may begin implementing the project to be vested with tax emption in an SEZ.
2. They may incur expenses related to a project to be vested with tax emption in an SEZ following the date of submission of an application for State aid, however, only the expenses incurred after the date of permit award will be deemed eligible expenditures.

In practice, this problem affects economic operators required to wait for an additional approval or vetting (e.g. by the Industrial Development Agency or the Ministry of Development itself) prior to issuance of their SEZ permit. Introduction of the institution of application for State aid eliminates the existing doubts in this area.

Regulatory change

Because the EU's State aid rules in force since mid-2014 had generated numerous doubts, as of 10 July 2017, amendments intended to eliminate these doubts were put into effect. One of the key areas the amended legislation clarifies is that of obtaining State aid (e.g. tax exemptions within SEZs) in the event of relocation. Until the time of introduction of the July 2017 amendments, the relevant provision did not allow granting of regional aid (including tax exemptions within SEZs) to entrepreneurs who: had closed down the same or similar activity within the European Economic Area ('EEA') within two years of their application for granting regional investment aid; or who, at the time of their aid application filing, have specific plans to close down such activity in a given area within two years of completion of the initial investment the aid application relates to. Since the terms "close down" and "the same or similar activity" had not been defined sufficiently clearly, the European Commission was forced to issue special explanations, and because these had not been satisfactory, a decision was taken to address the issue in the forthcoming amendment.

One of the key areas the amended legislation clarifies is that of obtaining State aid (e.g. tax exemptions within SEZs) in the event of relocation.



The new provisions introduced the notion of "transfer," which refers to the transfer of the same or similar activity or part thereof from an establishment within the territory of one EEA country (the primary establishment) to an establishment in which an investment obtaining aid is made and which is located in another EEA country (the aided establishment). A transfer occurs when the product or service at the primary establishment and the aided establishment serve, at least in part, the same purpose and meet the requirements or needs of the same customer category, and when one of the beneficiary's primary establishments within EEA sheds jobs in the same or similar activity.

The new regulations were intended to streamline the rules, but above all, to eliminate the consideration of completely unrelated cases. Imagine a situation in which a large capital group – say automotive parts suppliers – naturally discontinues a product line while its establishment in Poland, which wishes to benefit from an SEZ-related tax exemption, plans to launch a new product line for the same industry. The two events, i.e. the closure of an old plant and the opening of a new one, were in no way related, nonetheless, pursuant to the old legislation, if a plant closure occurred within two years of the time of application for an SEZ-related tax exemption, entry to an SEZ was not possible.

Pursuant to the new regulations, such unrelated events should no longer stand in the way of investment in SEZs, yet we are once more dealing with very general wording of EU legislation. How are we to ascertain whether a product "serves, at least in part, the same purpose" or that it "meets the (…) needs of the same customer category"? In the light of the planned amendments to the rules applicable to SEZ-related tax exemptions, it can be expected that the newly adopted EU regulations will only be reflected in the new domestic SEZ regulations.

Michał Klimczak
Manager of the Tax Advisory Department, Wrocław office

KPMG Publications

The KPMG analyses and reports are an output of our expertise and experience. The publications take up issues important to enterprises operating in Poland and globally.

How positive customer experience is built. A review of leading customer experience management practices in the Polish market

This report was based on a market survey of a representative sample of more than 5,000 Polish consumers, which was conducted in the first quarter of 2017 by an independent research agency using the computer-assisted web interview technique (or CAWI). The study followed the KPMG Nunwood research methodology we apply in other markets. The KPMG report also includes Top 100 Brands, a list of 100 brands which, in the opinion of Polish consumers, have offered them the best customer experience. The analysis included brands that provide services and/or sell products to retail customers, and which have a nationwide reach or one extending to the country's major cities. The report illustrates customer experience management practices and does not constitute the opinion or position of KPMG in Poland concerning the operation of any business enterprise.

Through the looking glass: a practical path to improving healthcare through transparency

The report is based on a global study conducted by KPMG International which reviews transparency outcomes from 32 countries, including the majority of the OECD and G20 countries. Every country's healthcare system was tested with the use of 27 indicators that measured the scope of systemic implementation of the respective transparency-building tools. The indicators had been selected on the basis of the subject-specific literature and expert interviews, under the guidance of the 12-member global health systems transparency group. The study considered metrics other organisations use to measure transparency and reveal significant deviations in different health systems.

The automotive industry, Q2/2017 Edition

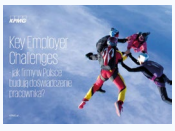
The report forms part of a quarterly report series that aims to present current trends in the Polish automotive industry, which includes the automotive market, industrial production and automotive financial services. The research is based on the latest available registration, statistical and market data. The publication is a joint project of the Polish Automotive Industry Association and KPMG in Poland.

The truth about online consumers

The report is based on a global survey KPMG International carried out on a sample of 18,430 consumers in 51 countries. The survey was web based and addressed itself to people aged 15-70 with at least one online purchase in the last 12 months. The data collected through the survey study and KPMG's analysis of it provide insights that can help companies understand and forecast the behaviour and preferences of online customers representing different geographic regions, generations and product categories.

PIT 2016 – Poles' annual tax return

The survey was conducted using the computer-assisted telephone interview technique (or CATI) on a representative sample of 1,003 adult Poles. Its purpose was to understand how Poles settled their income tax in 2016. The respondents were persons with the obligation of settling their 2016 personal income tax with the tax office. The group of respondents did not include persons who have their tax return prepared and submitted by ZUS, the Polish Social Insurance Institution, or their employer. The survey was conducted 20-26 March 2017.



Key Employer Challenges – How companies in Poland build employee experience

The report is based on a survey conducted in the fourth quarter of 2016 using CAWI and CATI techniques among 161 companies operating in Poland. The survey respondents included board members and top executives of companies operating in Poland, and human resources department managers. The researched issues included, but were not limited to, corporate employee experience practices within five pillars. These consist of the organisations' practices relating to: human capital retention, planning or its functional modification, human capital development and evaluation, the tools of remuneration, the work environment and the corporate culture.

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