

Tax and legal aspects of the functioning of the **Special Economic Zones** in Poland

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This publication has been prepared by TAAC Solutions for the Polish Investment and Trade Agency (PAIH).

The following publication will cover tax and legal aspects of the functioning of the Special Economic Zones in Poland, with particular emphasis on the issues specified below.

Agenda:

1. Permission for conducting business activity in the Special Economic Zone:
 - A. submission of the application
 - B. tender
 - C. tender documentation
 - D. choice of offer
 - E. issuance of permission
 - F. revocation of expiration of the permission
2. Exemption from taxation:
 - A. income tax exemption
 - B. property tax exemption

Legal acts:

- Ustawa o Specjalnych Strefach Ekonomicznych z dnia 20 października 1994 r. (Dz. U. z 2015 r. poz. 282, hereinafter: **SEZ Act**),
- Ustawa o podatku dochodowym od osób prawnych z dnia 15 lutego 1992 r. (Dz. U. z 2016 r. poz. 1888, 1926, 1993 i 1948, hereinafter: **CIT Act**),
- Ustawa o podatku dochodowym od osób fizycznych z dnia 26 lipca 1991 r. (Dz. U. z 2016 r. poz. 2032 i 2048, hereinafter: **PIT Act**),
- Rozporządzenie Rady Ministrów z dnia 10 grudnia 2008 r. w sprawie pomocy publicznej udzielanej przedsiębiorcom działającym na podstawie zezwolenia na prowadzenie działalności gospodarczej na terenach specjalnych stref ekonomicznych (Dz. U. z 2015 r. poz. 465, hereinafter: **Regulation**),
- Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Official Journal of the European Union, L 187/1 on 26.6.2014, hereinafter: **Regulation 651/2014**).

1. Permission for conducting business activity in the Special Economic Zone

The necessary condition for doing business in the Special Economic Zone on the territory of the Republic of Poland and obtaining a subsequent tax exemption is receiving a permission to operate in the Zone.

The permission specifies the subject of the trader's business and the conditions that he undertakes to fulfill. The subject of the entrepreneurial activity specified in the permission is particularly important in the case of exemption from corporation income tax or personal income tax (more specifically in point 2 of this report) calculated only on income obtained from activities conducted in the Zone on the basis of the obtained permission.

Income derived from business activity conducted within the Zone under the permission by legal persons or naturals is exempt from income tax, respectively, in accordance with the provisions of the corporate income tax regulations or the personal income tax regulations. This exemption constitutes state aid, the amount of which may not exceed the maximum amount specified in the provisions of the Regulation.

When an entrepreneur earns in the Zone an income from activities beyond the scope of the permission his income from such activities will not be exempted from taxation.

A. Submission of an application

The first step for an entrepreneur to obtain a permission is to choose one of the 14 Special Economic Zones, which was set up in accordance with the art. 4 of the SEZ Act).

Authorities responsible for issuing permission are companies managing individual economic zones, which the Minister of Development has delegated the power to, based on a statutory delegation (see Article 20 of the SEZ Act).

Chart 1. Zarządcy Specjalnych Stref Ekonomicznych w Polsce

Zone name	Administrator	Headquarters
Warmińsko-Mazurska Specjalna Strefa Ekonomiczna	Warmińsko-Mazurska Specjalna Strefa Ekonomiczna S.A.	OLSZTYN
Wałbrzyska Specjalna Strefa Ekonomiczna	Wałbrzyska Specjalna Strefa Ekonomiczna INVEST-PARK Sp. z o.o.	WAŁBRZYCH
Tarnobrzaska Specjalna Strefa Ekonomiczna	EURO-PARK WISŁOSAN Agencja Rozwoju Przemysłu S.A.	WARSZAWA
Suwalska Specjalna Strefa Ekonomiczna	Suwalska Specjalna Strefa Ekonomiczna S.A.	SUWAŁKI
Specjalna Strefa Ekonomiczna „Starachowice”	Specjalna Strefa Ekonomiczna „Starachowice” S.A.	STARACHOWICE
Słupska Specjalna Strefa Ekonomiczna	Pomorska Agencja Rozwoju Regionalnego S.A.	SŁUPSK
Pomorska Specjalna Strefa Ekonomiczna	Pomorska Specjalna Strefa Ekonomiczna Sp. z o.o.	SOPOT
Specjalna Strefa Ekonomiczna Euro-Park Mielec	Agencja Rozwoju Przemysłu S.A.	WARSZAWA
Łódzka Specjalna Strefa Ekonomiczna	Łódzka Specjalna Strefa Ekonomiczna S.A.	ŁÓDŹ
Legnicka Specjalna Strefa Ekonomiczna	Legnicka Specjalna Strefa Ekonomiczna S.A.	LEGNICA
Krakowski Park Technologiczny	Krakowski Park Technologiczny Sp. z o.o.	KRAKÓW
Kostrzyńsko-Słubicka Specjalna Strefa Ekonomiczna	Kostrzyńsko-Słubicka Specjalna Strefa Ekonomiczna S.A.	KOSTRZYN NAD ODRĄ
Katowicka Specjalna Strefa Ekonomiczna	Katowicka Specjalna Strefa Ekonomiczna S.A.	KATOWICE
Kamiennogórska Specjalna Strefa Ekonomiczna Małej Przedsiębiorczości	Kamiennogórska Specjalna Strefa Ekonomiczna Małej Przedsiębiorczości S.A.	KAMIENNA GÓRA

Source: own elaboration based on the data published by the Polish Ministry of Development

The entrepreneur submits to the Special Economic Zone Authority the declaration of conducting business activity in the Zone. There are no formal requirements relating to the content or form of the document, but it is necessary to include in it the basic terms and conditions of business activity (purpose and place of business). It should be pointed out, that in art. 2 par. 1 Regulation) restrictions on business activity for the applicant have been introduced.

According to § 2 subpar. 1 of the Regulation an entrepreneur cannot conduct business in the Special Economic Zone, related especially to:

- manufacture of explosives, tobacco products, motor fuel processing, manufacturing, bottling and processing of alcoholic beverages,
- running gambling business,

- installation, maintenance and repair services for machinery and equipment,
- drainage and sewage treatment services,
- waste collection, treatment and disposal services,
- other services related to waste management,
- construction works,
- wholesale and retail trade,
- financial and insurance services,
- professional, scientific and technical services,
- and many others described in detail in §2 subpar. 1 of the Regulation.

B. Tender

The next step after the successful submission of the application is the announcement by the Special Economic Zone Administrator a public tender or negotiations to select entrepreneurs who will be permitted to conduct a business activity in the Special Economic Zone.

Tender is announced when the activity requires the purchase of land, whereas the negotiations are announced when the entrepreneur is already an owner of the land.

Precise evaluation criteria for business ventures carried out in the Special Economic Zones were set out individually in the regulations of the Minister of Development for each Zone.

C. Tender documentation

In order to participate in the tender or negotiations, the entrepreneur is asked to submit the documentation required in the tender or negotiations, which can confirm fulfilling requirements.

D. Choice of offer

In the process of choosing the most advantageous offer, the Special Economic Zone Administrator is obliged to verify in particular:

- the type of economic activity that the trader intends to perform in the Zone and its potential impact on the achievement of the goals set out in the Zone's Development Plan,
- conformity of the type of business activity that the entrepreneur intends to perform in the Zone with the art. 2 of the Regulation (see page 2 of this document),
- the amount of the entrepreneur's own funds, which must be at least 25% of the total eligible costs of the investment,
- funds received by the trader as a result of the activity in the Zone will not be devoted to replacement investments,
- the total amount of the state regional aid received by the entrepreneur does not exceed the value specified in the par. 4 of the Regulation.

The fulfillment of the above criteria by the entrepreneur qualifies him to further evaluation, which follows the rules specified in the conditions of a particular tender or negotiations drawn up for a given procedure on the basis of the criteria for evaluating the intentions of business undertakings, planned to be undertaken by entrepreneurs in the area of the Special Economic Zone.

Entrepreneurs whose planned activity in the Zone most closely corresponds to the Zone's Development Plan are recognized as eligible.

E. Issuance of permission

The final stage of the described procedure is the issuance of permission, based on the decision of the Special Economic Zone Authority, which authorizes an entrepreneur to conduct a business activity in the Zone and admits him the right to obtain a state aid.

Apart from the scope of business activity, permission includes also:

- employment conditions,
- investment conditions in the Zone, exceeding the amount specified in the obtained permission,
- date of completion of the investment,

- maximum amount of eligible investment costs as well as two years employment and eligible costs.

The permission issuance procedure is carried out in the shortest possible time, however, due to the tendering procedure it may take about 4 months.

F. Revocation or expiration of permission

The basic factor that causes the expiration of the permission is the lapse of the time for which it was issued.

Permission may be withdraw if an entrepreneur:

- has ceased business activity in the Zone for which he has a permission,
- blatantly violated the conditions set out in the permission,
- has not removed the deficiencies identified during the audit conducted in connection with the business activity within the time limit set by the inspection bodies,
- requested to withdraw the permission or limit the scope of business activity specified in the permission.

2. Exemption from taxation

A. Income tax exemption

One of the most important benefits resulting from investing in the Special Economic Zones in Poland is the possibility of obtaining the entrepreneur's exemption from taxation.

Doing business in Special Economic Zones does not restrict an entrepreneur territorially to act only in Special Economic Zone. It means that it is also possible to operate outside the Zone, however, the tax exemption will only be granted to income earned from activities carried out in the Zone.

To determine whether a business is taxable or exempt, an entrepreneur should identify the sources of revenue:

- whether the business activity is conducted in the Zone?
- is the business activity carried out of the Zone compatible with the type of business activity issued in the permission?
- have formal conditions for the state aid been met?

As a result, the income derived from the business activity of an entrepreneur conducted in accordance with the obtained permission in a specific Special Economic Zone will be exempted from taxation. Income that goes beyond the scope of the exemption will be taxed, for instance, the sale of products that are not entitled in the permission or if the business activity is statutory excluded from the permitted business activity in the Zone, e.g. fuel production, gambling.

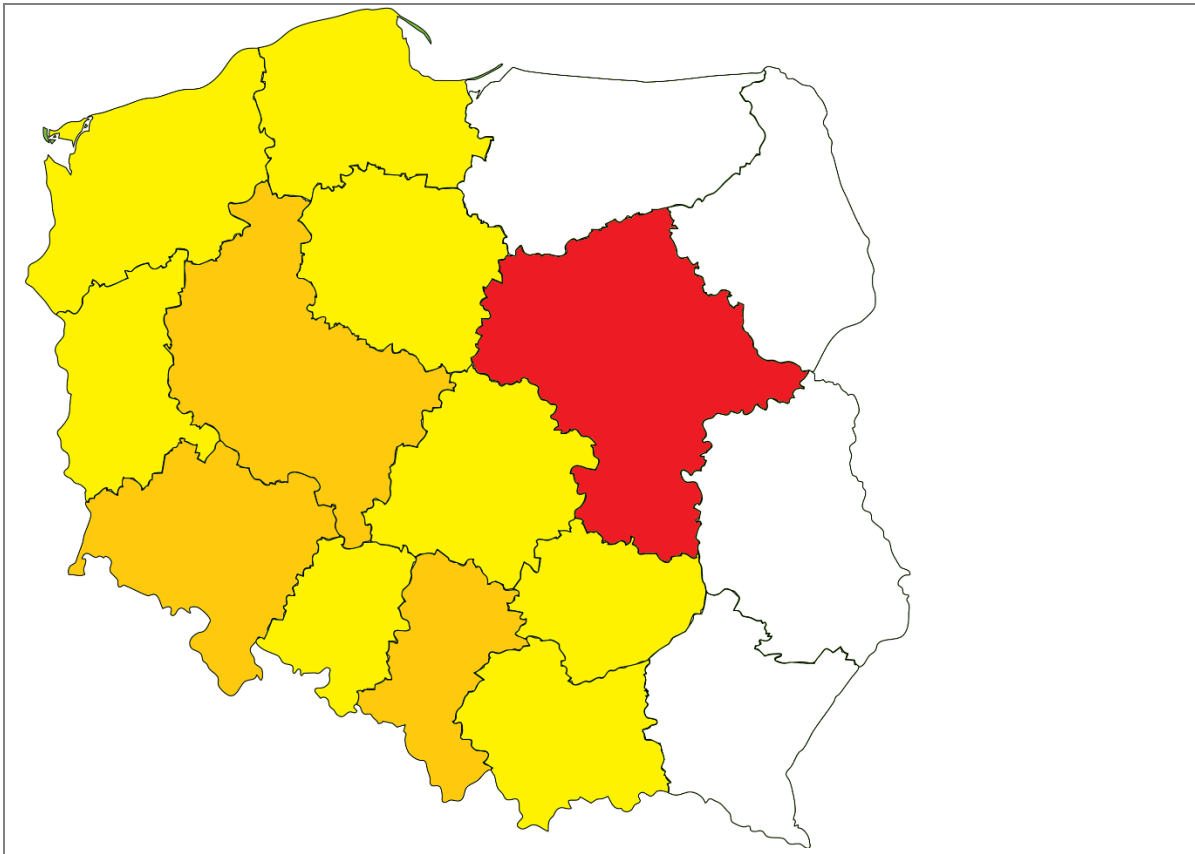
The situation would be different if an entrepreneur carrying out a business activity exempted from taxation in the Zone would also have it outside the Zone. Then the activity outside the Zone will be subject to taxation in spite of having the right to tax exemption in the Zone.

The amount of state aid depends on a number of factors, the most important of which are:

- investment location,
- the size of the entrepreneur,
- amount of investment outlays.


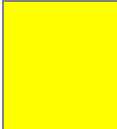


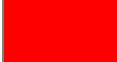

According to the § 4 subpar 1 of the Regulation, the maximal regional aid intensity amounts to (see the key below):

Maximal regional aid intensity:



Source: own elaboration based on the Regulation.

Key:

	50% of the maximum state aid intensity - voivodeships: lubelskie, podkarpackie, podlaskie, warmińsko-mazurskie
	35% of the maximum state aid intensity - voivodeships: kujawsko-pomorskie, lubuskie, łódzkie, małopolskie, opolskie, pomorskie, świętokrzyskie, zachodniopomorskie and in the areas belonging to subregions: ciechanowsko-płocki, ostrołęcko-siedlecki, radomski i warszawski wschodni
	25% of the maximum state aid intensity - voivodeships: dolnośląskie, śląskie i wielkopolskie
	20% of the maximum state aid intensity - subregion warszawski zachodni
	15% of the maximum state aid intensity - area belonging to the capital city of Warsaw to 31st December 2017
	10% of the maximum state aid intensity - area belonging to the capital city of Warsaw from 1st January 2018

The state aid thresholds shown in the map above may be increased by 20% for small entrepreneurs and 10% for medium entrepreneurs.

The tax exemption is valid from the month in which the first investment expenditure was incurred after permission was granted till the allowed regional aid is used.

Regional investment aid is granted to entrepreneurs in the form of tax exemptions according to art. 17 par. 1 point 34 of the CIT Act or according to art. 21 par.1 point 63a of the PIT Act for:

- the cost of a new investment whose size is calculated as the product of the maximum state aid intensity specified for the area and the investment cost eligible for the state aid,
- the creation of new jobs, the size of which is calculated as the product of the maximum area-specific state aid intensity and the two-year labour costs of the newly recruited employees, including the gross wage costs of those employees, increased by compulsory contributions such as social security contributions expended by the entrepreneur from the date of employment of these employees.

The condition for granting state aid for a new investment is the share of the entrepreneur's own funds, understood as funds not obtained under the state aid, amounting to at least 25% of the total eligible costs of the investment.

A new investment is defined as an investment in fixed assets and intangible assets consisting of:

- creating a new or expanding existing business,
- diversification of company's production by introducing additional products,
- acquisition of an enterprise or an organised part thereof that is in liquidation or would have been liquidated if it had not been acquired.

Newly employed employees are the number of employees employed after obtaining a permission in connection with the execution of a new investment but no later than 3 years after the completion of the investment and each place of work is maintained for a period of at least 5 years and, in the case of small and medium entrepreneurs - for at least 3 years from the date of their creation. Number of employees refers to full-time employees during one year, including part-time and seasonal workers, on a full-time basis.

The provisions of the Regulation specify in detail which expenditures are considered as eligible costs for obtaining state aid in the form of corporate income tax exemption.

As eligible cost shall be deemed investment costs reduced by VAT and excise duty if they were incurred within the Zone in accordance with the permission, among others:

- purchase price of land or perpetual usufruct rights,
- purchase price or cost of manufacturing of fixed assets if they are included in the taxpayer's assets,

- the cost of extending or modernizing existing fixed assets,
- purchase price of intangible assets related to technology transfer through the acquisition of patent rights, licenses, know-how,
- the cost associated with letting or renting land and/or buildings,
- purchase price of assets other than land, buildings and structures covered by lettings or leases¹.

The minimum investment cost is 100 000 Euro calculated according to the exchange rate announced by the National Bank of Poland on the day of issuing the permission.

The maximum amount of regional investment aid granted in the form of a corporation tax credit exemption, i.e. the maximum amount of income tax from which an entrepreneur running a business in the Zone is exempted, are determined by the following criteria:

- the amount of expenses incurred by the entrepreneur,
- the amount of maximum expenses stated in the permission to running a business in the Zone,
- maximal intensity of state aid.

The amount of expenditure incurred by the entrepreneur is related to the method of calculating the maximum amount of regional aid (tax exemptions). If the total amount of expenditures does not exceed 50 000 000 Euro, the maximum regional aid is calculated as the gross grant equivalent to the entrepreneur's expenditure and in each Zone is specified in the regional map shown above, e.g.:

$$I = R \times B$$

- I** maximum amount of state aid for the investment project,
- R** maximum regional state aid intensity for the area in which the investment is located,
- B** the amount of investment expenses incurred by the entrepreneur in accordance with the issued permission.

¹ More details are included in § 6 of Regulation

Example 1.

If the entrepreneur has incurred an investment cost of 20 million Euro for the investment in Suwałki (*Suwalska Specjalna Strefa Ekonomiczna*), the maximum amount of state aid will be:

$$I = 0,50 \times 20 \text{ million EUR}$$
$$I = 10 \text{ million EUR}$$

The amount of state aid for the realization of a large investment project is determined according to the formula:

$$I = R \times (50 \text{ million EUR} + 0,5 \times B + 0 \times C)$$

- I maximum amount of state aid for a large investment project,
- R maximum regional state aid intensity for the area in which the investment is located,
- B the amount of eligible costs exceeding the equivalent of 50 million EUR determined by the average currency exchange rate published by the National Bank of Poland (on the date of granting state aid) - not exceeding the equivalent of 100 million EUR),
- C the amount of eligible costs for state aid exceeding the equivalent of 100 million EUR.

Example 2.

The entrepreneur has incurred investment expenditures in the area located in the Pomeranian Special Economic Zone (*Pomorska Specjalna Strefa Ekonomiczna*) related to the purchase of a land and the construction of the factory amounting to 150 000 000 million EUR. On the day of issuing the permission, the value of the above expenses (excluding the VAT deducted by the entrepreneur) amounted 645 000 000 million PLN (PLN to EUR 4.30 rate announced by the National Bank of Poland on the day of the issuing the permission):

$$I = 35\% \times (50\,000\,000 + 0,5 \times 50\,000\,000 + 0 \times 100\,000\,000)$$
$$I = 26\,250\,000 \text{ million EUR}$$

In order to qualify for the exemption from corporate income tax an entrepreneur requires:

- retaining ownership of the property to which the capital expenditure relates - for a period of 5 years from the date of introduction into fixed assets and intangible assets evidence (for a period of 3 years for small and medium-sized enterprises),
- maintaining an investment in a region where state aid has been granted for a period of not less than 5 years from the time the entire investment was completed (for small and medium entrepreneurs - for a period of not less than 3 years).

In the event of the expiration or revocation of a permission to operate in the Zone, the entrepreneur loses the right to tax exemption and is required to pay a tax for the entire period of a tax exemption.

B. Exemption from property tax

Entrepreneurs conducting business in the Zone may be exempt from property tax on the basis of a resolution of the competent local authorities.

Obtaining from the local authorities a property tax exemption depends on incurring investment expenditures and creating new jobs. Property tax exemption also depends on:

- notifying the competent tax authority of entrepreneurs intention to apply for state aid,
- continue investing in the region for at least 5 years for large entrepreneurs and continue investing in the region for at least 3 years for micro, small or medium entrepreneurs.

The possibility of obtaining a property tax exemption always depends on the resolution of local authorities.

TAAC Solutions is a tax and accounting advice company founded in 2010.

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