



A guide to operation, duty preferences and compliance with the Special Economic Zone legislative structure.

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Glossary of Terms and Abbreviations

CCA	Customs Controlled Area
CCAEE	Customs Controlled Area Enterprise
CDA	Customs Duty Act 30 of 2014
DTIC	Department of Trade, Industry and Competition
ETI	Employment Tax Incentive
ETI	Employment Tax Incentive Act 26 of 2013
FDI	Foreign Direct Investment
Income Tax Act	Income Tax Act 58 of 1962
SARS	South African Revenue Services
SEZ Act	Special Economic Zones Act 16 of 2014
SEZ	Special Economic Zone
VAT	Value-Added Tax
VAT Act	Value-Added Tax Act 89 of 1991

What is a “Special Economic Zone” (SEZ)?

A “Special Economic Zone” (SEZ) is a designated geographic area that provides tax incentives and allowances to businesses located within the SEZ. The Special Economic Zones Act 16 of 2014 (SEZ Act)¹ governs the establishment, management and operations of SEZs. In addition, two sets of regulations are relevant, namely the Regulations made in terms of section 41 of the Act (Proc R.6 of 9 February 2016 in GG No. 39667) (hereafter, ‘2016 Regulations’) and the Special Economic Zones Regulations (GN 390 of 29 March 2018 in GG No. 41534).

According to the Department of Trade, Industry and Competition (“DTIC”)², SEZs serve as economic tools to:

- Promote industrial agglomeration;
- Build the required industrial infrastructure;
- Promote coordinated planning among key government agencies and the private sector; and
- Guide the deployment of other necessary development tools.

SEZs can manifest in various forms such as a ‘free port’, ‘free trade zone’, ‘port of entry’ and ‘sector development zone’.

According to the SEZ Act,

- a ‘free port’ is a duty-free area adjacent to a port of entry where imported goods may be unloaded for value-adding activities within the SEZ for storage, repackaging or processing, subject to customs procedures;
- a ‘free trade zones’ are duty-free areas offering storage and distribution facilities for value-adding activities within the SEZ for subsequent export;
- a ‘port of entry’ means a place designated as a place of entry for the control of vessels, aircraft, trains, vehicles, goods and persons entering the Republic; and

1. http://www.saflii.org/za/legis/num_act/seza201416o2014g37664274.pdf

2. DTIC <http://www.thedtic.gov.za/sectors-and-services-2/industrial-development/special-economic-zones/>



Certain requirements need to be met in order to operate within any of South Africa's 11 operating SEZs. The specific SEZ of interest, in this case, is the Atlantis Greentech SEZ, which specializes in renewable energy and Greentech development in South Africa. A new market development in the Atlantis SEZ is the adoption of South Africa's 'localisation initiative'. Under this framework, the sector masterplans and 'designation' serve as mechanisms to implement 'localisation'. This localisation drive will be discussed later in the brochure.

- a 'sector development zone' means a zone focused on the development of a specific sector or industry through the facilitation of general or specific industrial infrastructure, incentives, technical and business services primarily for the export market.

The key role players in a SEZ are the Minister of Trade, Industry and Competition, the Minister of Finance, the SEZ Advisory Board, the SEZ Board, the SEZ operator and businesses located in a SEZ. In simple terms, the Minister of Trade, Industry and Competition, in consultation with the Minister of Finance, decides on whether a SEZ should be created (designated) based on the recommendation of the SEZ Advisory Board. In general, only a state organ such as national, provincial or local government can apply to create a SEZ. However, the SEZ Act does allow for a public-private partnership to apply for the creation of a SEZ. This designation, which is different from the localisation designation we discuss below, can be done with or without conditions and is published in the Government Gazette.

Once a SEZ is created, usually state-owned companies with sufficient financial means and expertise can apply to the Minister of Trade, Industry and Competition through the SEZ Advisory Board to be appointed as a SEZ operator. The SEZ operator, when appointed, will then have the responsibility to develop, operate and manage the SEZ on behalf of the SEZ Board.

Businesses can then apply to the SEZ Board to be located within the SEZ. Once they are located within the SEZ, businesses will be eligible to access the tax incentives and duty preferences provided they can prove that they seek to achieve the purposes of SEZs under the SEZ Act.

How does one locate a business in a SEZ?

Any person who intends to conduct a business in a SEZ must apply to the Special Economic Zone Board, in the manner and form prescribed, to locate the business in the SEZ. In terms of the 2016 Regulations, an application by a business or service to locate in a SEZ must comply with the SEZ Act, these Regulations and must contain—

- the licences, registrations or permits required by the business or service to conduct its operations; and
- a business plan.

In the application, the applicant must—

- provide information to show that the applicant conducts a business or renders a service prescribed by the Minister in terms of section 24(4);
- indicate the extent to which the applicant's business achieves the purpose of SEZs set out in section 4; and
- comply with any other criteria that the Minister may prescribe.

This application by a business or service to locate in a SEZ must be in writing and must be submitted to the Chairperson of the Special Economic Zone Board at the street address of the head office of the Special Economic Zone Board³, or by registered post sent to the Chairperson of the Special Economic Zone Board at the postal address of the head Special Economic Zone Board⁴.

The Special Economic Zone Board:

- must provide the applicant with a written acknowledgement of receipt within seven days of receipt of the application;
- may request such further documentation or particulars in writing from an applicant relating to any matter pertaining to the application as may be deemed necessary, within thirty days after receipt of the application; and
- may conduct such investigation and/or inspection of the applicant or request the applicant to make oral submissions to the Special Economic Zone Board as may be deemed necessary in the circumstances.

The Special Economic Zone Board may, after considering the recommendations of the operator, approve the application of a business to locate within that SEZ, with or without conditions. See “Annexure A: How to locate your business in a SEZ”.

3. 2nd Floor, North Wharf, 42 Hans Strijdom Avenue, Foreshore, Cape Town, 8001.

4. Cape Town Branch, Private Bag X9087, Cape Town, 8000 - Permits, Environmental Affairs.

Which businesses can be located in a SEZ?



These are the types of services and businesses that can be located in a SEZ as provided by the 2016 Regulations:

- a business conducting manufacturing activities;
- a business performing internationally tradable services;
- a business providing warehousing and distribution and logistics services.

A service or business, other than a service or business stated above may apply to locate in a SEZ provided that such a service or business provides services or sell goods, which support the businesses located in the SEZ and the number of services or businesses and the area they occupy in the SEZ does not exceed the number and area provided for in the 'Guidelines'. However, these Guidelines are not yet in force.

A business that has been approved to locate in the SEZ shall not, by virtue of such approval, qualify for the support measures contemplated in the 2016 Regulations. The SEZ Act outlines the support measures in the form of incentives and allowances that accrue to operators and businesses located within a SEZ subject to compliance with the relevant requirements. Below is an outline of the benefits of being located in a SEZ comprising of tax incentives and duty preferences.

Which businesses can be located in a SEZ?

INCENTIVE BENEFITS WITHIN A SEZ

The SEZ Act states that the Minister of Trade, Industry and Competition (of DTIC) may determine and implement support measures, including incentive schemes, for operators and businesses operating within SEZs. The SEZ Act also allows any government organ to create other incentives schemes to support businesses located in a SEZ. In particular, the 2016 Regulations state that an operator operating within a SEZ may qualify for the following support measures:

- tax relief applicable to a business in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), the Customs and Excise Act, 1964 (Act 91 of 1964) and the Customs Duty Act 2014 (Act 30 of 2014); or
- any other support measure applicable to qualifying operators as may be determined from time to time.

An operator must comply with the SEZ Act and criteria stipulated in other relevant legislation, including the Income Tax Act 58 of 1962, the Employment Tax Incentive Act 26 of 2013, the Value Added Tax Act 89 of 1991, Customs and Excise Act 91 of 1964 and the Customs Duty Act 30 of 2014 in order to qualify for the support measures. The Customs Duty Act is not yet in operation.

Section 7 of the SEZ Act then states the support measures for businesses located in a SEZ as the following:

- a. tax incentives in terms of the Income Tax Act and Employment Tax Incentive Act, 2013 (Act 26 of 2013);
- b. tax relief applicable to a business in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), the Customs and Excise Act, 1964 (Act 91 of 1964) and the Customs Duty Act 2014 (Act 30 of 2014); or
- c. any other support measure applicable to a business prescribed in terms of section 24 (4) of the Act, as may be determined from time to time.

A SEZ comes with multiple benefits, more specifically incentives.

These incentives are:⁵

- VAT Relief;
- Building Allowances;
- Corporate Tax Incentives; and
- Employment Tax Incentive.

5. DTIC http://www.thedtic.gov.za/wp-content/uploads/SEZ-brochure_2021.pdf

VAT RELIEF

Section 23(1) of the Value-Added Tax Act 89 of 1991 (VAT Act) states that a person becomes liable to register for value-added tax (VAT) purposes when that person carries on an “enterprise” and the total value of the taxable supplies made or to be made by that person in the course or furtherance of that enterprise has exceeded or is likely to exceed R1 million in a period of twelve consecutive months.

If a person satisfies the above requirement, you will be liable to register for VAT on a date determined by the Commissioner for SARS and account for VAT.

In terms of section 7(1) VAT Act, a vendor will be liable to levy VAT:

- on the supply goods or services in the **course or furtherance of any enterprise** carried on by him/her;
- on the importation of any goods into the Republic by him/her;
- and on the supply of any imported services by him/her.

Goods

It should be noted that given certain exceptions and exemptions, the supply of goods under a rental agreement or instalment credit agreement may be zero-rated in terms of section 11(1)(c) and section 11(3) read with Item E of Table A to Interpretation Note 31 (Issue 4 – Documentary proof required for the zero-rating of goods and services - dated 9 March 2016) (IN 31).

Furthermore, the supply of goods to a SEZ (CCA and CCAE) may be subject to VAT at the zero rate in terms of a sale or instalment credit agreement as contemplated under section 11(1)(m) and section 11(3) to the VAT Act read with Item P of Table A to IN 31.

It should be noted that goods removed from CCA for, example, repairs and not returned to the CCA within 30 days, will have customs and VAT implications. For purposes of Customs, a voucher of correction should be passed to bring duty to account as well as a liability to account for VAT at the standard rate of 15%.

The letting of fixed property in a CCA is also subject to VAT at the zero rate under section 11(1)(mA) and section 11(3) read with Item Q of Table A to IN 31.

Services

Service physically rendered to a SEZ operator in a CCA or CCAE may also be zero-rated in terms of section 11(2)(k) and section 11(3) read with Item L to Table B of IN 31.

Interpretation Note 40 details the VAT treatment of the supply of goods or services to and from a CCA.

NB: VAT relief is administered by SARS. The documentation required for each incentive is referred to following, subject to compliance with the requirements of each incentive.

SECTION 11(3) DOCUMENTARY PROOF REQUIREMENTS

SECTION	DOCUMENTS
<p>Section 11(1)(c) Movable goods used exclusively in an export country or by a customs controlled area enterprise (CCAЕ) or an industrial development zone (IDZ) operator in a customs control area (CCA) [section 11(1)(c)]</p>	<ol style="list-style-type: none"> 1. Tax invoice; 2. Proof of payment; and 3. In the case of use in an export country: 4. Proof of export from the Republic or proof that the movable goods are situated outside the Republic; or 5. In the case of use in a CCA: <ul style="list-style-type: none"> • The original VAT267 form endorsed by a SEZ operator when the goods entered the CCA; and • Proof that the purchaser is a CCAЕ or a SEZ operator.
<p>Section 11(1)(m) Movable goods to a CCAЕ or an IDZ operator in a CCA</p>	<ol style="list-style-type: none"> 1. Tax invoice; 2. Proof that the vendor used its own mode of transport or its cartage contractor; 3. Proof that the purchaser is a CCAЕ or a SEZ operator; 4. The original VAT267 form endorsed by a SEZ operator when the goods entered the CCA; and 5. Proof of payment.
<p>Section 11(1)(mA) Fixed property situated in a CCA to a CCAЕ or an IDZ operator under any agreement of sale or letting or any other agreement for use or permission to use</p>	<ol style="list-style-type: none"> 1. Tax invoice; 2. Written confirmation that the fixed property is situated in a CCA; 3. Proof that the purchaser/lessee is a CCAЕ or a SEZ operator; and 4. Proof of payment
<p>Section 11(2)(k) Services physically rendered in an export country or to a CCAЕ or an IDZ operator in a CCA</p>	<ol style="list-style-type: none"> 1. Tax invoice; 2. Services physically rendered in an export country: <ol style="list-style-type: none"> i) A copy of the vendor's or the vendor's employee's passport bearing a stamp of entry into the export country; or ii) In instances where a vendor sub-contracts the services to a person situated in an export country, a copy of the contract between the vendor and the subcontracted person situated in an export country; or 3. Services physically rendered to a CCAЕ or a SEZ operator in a CCA of a SEZ: The original page of the VAT267 form endorsed by a SEZ operator to evidence the entry and exit of the vendor or the vendor's employee into and out of a CCA of a SEZ, in order to perform the services; and 4. Proof of payment.



Rebates under the Customs Act

Goods imported under rebate item 498.00 of Part 6 to Schedule 4 will not be subject to any duty. It should be noted that a registered CCAE may use rebate item 498.01 for imports and a registered SEZ operator may make use of rebate item 498.02 for imported goods.

BUILDING ALLOWANCES

Section 12S of the Income Tax Act provides for an accelerated depreciation allowance for the erection or improvement of buildings and other fixed structures for qualifying companies operating within SEZs. This incentive is applied to the annual income tax return (ITR14).

Section 12S(2) states that a “qualifying company” may deduct an allowance equal to 10% of the cost of any new and unused buildings owned by the qualifying company, or any new and unused improvements to any building owned by the qualifying company, if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within a SEZ, as defined in section 12R (1), in the course of the taxpayer’s trade, other than the provision of residential accommodation.

S12R defines a “qualifying company” as a company:

1. Incorporated by or under any law in force in the Republic or any part thereof; or have its place of effective management in the Republic
2. Carry on a trade in a SEZ gazetted by the Minister of Finance after consultation with the Minister of Trade and Industry.
3. Derive not less than 90% of its income from the carrying on a trade within one or more SEZs.
4. Carry on trade from a fixed place of business situated within a SEZ
5. More than 20% of the deductible expenditure incurred and more than 20% of income is received/ accrued must not be from a connected person
6. Must not conduct any activity (classified in the SIC code) referred to in section 12R(4)(a) or (b): See Annexure B.

In addition, they must erect and own a capital structure and affect lease improvements to a building.

In terms of section 12S(3), if a qualifying company completes an improvement as contemplated in section 12N, the expenditure incurred by the qualifying company to complete the improvement must be deemed to be the cost to the qualifying company of any new and unused building or of any new and unused improvement to a building contemplated in section 12S(2).

For the purposes of section 12S, the cost to a qualifying company of any building or improvement must be deemed to be the lesser of the actual cost to the qualifying company or the cost which a person would, if that person had acquired, erected or improved the building under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition, erection or improvement of the building was in fact concluded, have incurred in respect of the direct cost of the acquisition, erection or improvement of the building.

No deduction may be allowed under section 12S(5) regarding any building that has been disposed of by the qualifying company during any previous year of assessment. A deduction may not be allowed under any other section of this Act in respect of the cost of a building or improvement if any of that cost has qualified or will qualify for deduction from the qualifying company's income as a deduction of expenditure or an allowance in respect of expenditure under this section. The deductions which may be allowed or deemed to have been allowed in terms of section 12S and any other provision of this Act in respect of the cost of any building or improvement may not in the aggregate exceed the amount of such cost.

The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, disallow all deductions otherwise provided for under this section if a qualifying company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner. The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where a deduction that has been allowed in any previous year must be disallowed in terms of section 12S(8). Section 12S ceases to apply regarding expenditure incurred during any year of assessment commencing on or after 1 January 2031.

Under the Manufacturing Development Act 187 of 1993, section 36 of the GNR.1224 of 1 December 2000: Industrial Development Zone Programme Regulations provides for import/export incentives by stating that sales from the customs territory to a CCA must be deemed to be exports from South Africa, and as such, shall be governed by the Customs and Excise Act and related legislation and subject to normal customs policy. Such sales may receive benefits and incentives granted to exporters under South African law, provided that such sales shall not qualify for support within the Export Marketing and Investment Assistance Scheme.

Section 12S ceases to apply in respect of any year of assessment commencing on or after 1 January 2031.

The Atlantis SEZ does not qualify for section 12S as the SEZ has not been approved by the Minister of Finance.

Ordinarily, the building allowance would be administered by SARS.

CORPORATE TAX INCENTIVES

Reduced Corporate Income Tax Rate

A SEZ offers a reduced corporate income tax rate of 15% in comparison with the current 28% for companies situated outside of a SEZ. To access the corporate income tax benefit, taxpayers must claim it in the appropriate fields of their annual corporate tax return⁶. Section 12R of the Income Tax Act defines a “qualifying company” as a company—

1. Incorporated by or under any law in force in the Republic or in any part thereof or that has its place of effective management in the Republic;
2. It carries on a trade in a SEZ designated by the Minister of Trade and Industry in terms of the SEZ Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of this section by notice in the Gazette;
3. This trade is carried on from a fixed place of business situated within a SEZ;
4. If not less than 90% of the income of that company is derived from the carrying on of a trade within one or more SEZs; and that—
 - was carrying on any trade before 1 January 2013 in a location that is subsequently approved for the purpose of this section as a zone in terms of 12R(3);
 - commenced, on or after 1 January 2013 the carrying on, in a location that is approved or subsequently approved for the purpose of this section as a zone in terms of 12R(3), of any trade not previously carried on by that company or any connected person in relation to that company in the Republic; or
 - commenced, on or after 1 January 2013 the carrying on, in a location that is approved or subsequently approved for the purpose of this section as a zone in terms of 12R(3), of any trade and that trade—comprises of the production of goods not previously produced by that company or any connected person in relation to that company in the Republic; utilises the use of new technology in that company’s production processes; or represents an increase in the production capacity of that company in the Republic. The Minister of Finance must approve a SEZ for purposes of this section after taking into account the financial implications for the State should a SEZ be approved under this section.
5. Even if a qualifying company is located in a SEZ, that company is not a qualifying company if that company conducts any of the following activities classified under “section C: Manufacturing” in the SIC Code:
 - Distilling, rectifying and blending of spirits (SIC Code 1101);
 - Manufacture of wines (SIC Code 1102);
 - Manufacture of malt liquors and malt (SIC Code 103);
 - Manufacture of tobacco products (SIC Code 12);
 - Manufacture of weapons and ammunition (SIC Code 252);
 - Manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic;
6. Furthermore, a company that conducts any activity classified in the SIC Code, which the Minister of Finance may designate by notice in the Gazette, is not a qualifying company - see Annexure B for those activities.

6. SARS ‘Simplified Overview of Special Economic Zones Tax and Customs Incentives’.

7. A company is also not a qualifying company if—
- more than 20% of expenditure that is deductible under this Act is incurred; or
 - more than 20% of the income of that company is received or accrued;

in respect of transactions with any connected person in relation to that company if that connected person is a resident; or is not a resident and those transactions are attributable to a permanent establishment of that connected person in the Republic.

This incentive is available for a period not exceeding 10 years after a company is established and begins trading in a SEZ. Section 12R ceases to apply in respect of any year of assessment commencing on or after 1 January 2031.

The Atlantis SEZ does not qualify for section 12R as the SEZ has not been approved by the Minister of Finance.

Ordinarily, the corporate tax incentive would be administered by SARS

Investment and Training allowances

Section 12I of the Income Tax provides for investment and training allowances. Section 12I(2) provides for the following investment allowances in respect of industrial policy projects:

- (2) In addition to any other deductions allowable in terms of this Act, a company may, subject to subsection (3), deduct an amount (hereinafter referred to as an additional investment allowance) equal to—
- (i) 55% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status; or
 - (ii) 100% of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within a SEZ; or
- (i) 35% of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status; or
 - (ii) 75% of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within a SEZ, in the year of assessment during which that asset is first brought into use by the company as owner thereof for the furtherance of the industrial policy project carried on by that company if that asset was acquired and contracted for on or after the date of approval and was brought into use within four years from the date of approval.

Section 12I(8) then states that the Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial project as an industrial policy project, either with or without preferred status, where that Minister is satisfied that the industrial policy project will significantly contribute to the Industrial Policy Programme within the Republic having regard to, in the case of a greenfield project, the location of the project within a SEZ.

The additional investment allowance contemplated in 12I(2) may not exceed—

- R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project from the date of approval;
- R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project from the date of approval.

A company may also deduct an amount (“the additional training allowance”) equal to the cost of training provided to employees in the year of assessment during which the cost of training is incurred for the furtherance of the industrial policy project carried on by that company. The cost of training contemplated here must be incurred by the end of the compliance period. This additional training allowance allowed to a company may not exceed R36 000 per employee. The additional training allowance allowed to a company at the end of the compliance period from the date of approval may not exceed—

- R30 million in the case of an industrial policy project with preferred status; and
- R20 million in the case of any other industrial policy project.

The investment and training allowance is administered by SARS. The Budget Review of 2020 at page 42 states that the tax incentive will not be renewed past 31 March 2020. It explains that given the fiscal position, government does not intend to extend the tax incentive for SEZ beyond the six zones already approved by the Minister of Finance.

EMPLOYMENT TAX INCENTIVE (ETI)

The ETI reduces the employer’s cost of hiring young people through a cost-sharing mechanism with the government by allowing companies to reduce the amount of Pay-As-You-Earn (PAYE) payable while leaving the wage received by the employee unaffected⁷. Section 6 of the Employment Tax Incentive Act states that an employee qualifies for the ETI if the employee—

1. is not less than 18 years old and not more than 29 years old at the end of any month in respect of which the employment tax incentive is claimed;
2. is employed by an employer that is a qualifying company as contemplated in section 12R of the Income Tax Act, and that employee renders services to that employer mainly within the SEZ in which the qualifying company that is the employer carries on trade;
3. has an identity card referred to in section 14 of the Identification Act issued to that employee after application for the card in terms of section 15 of that Act or has an asylum seeker permit issued to that employee in terms of section 22 (1) of the Refugees Act after application for the permit in terms of section 21 (1) of that Act, or has an identity document issued in terms of section 30 of the Refugees Act;
4. the employer is not a connected person as defined in section 1 of the Income Tax Act;
5. is not a domestic worker as defined in section 1 of the Basic Conditions of Employment Act;
6. was employed by the employer or an associated person on or after 1 October 2013 in respect of employment commencing on or after that date;
7. is not an employee in respect of whom an employer is ineligible to receive the incentive by virtue of

section 4; and

8. receives remuneration in an amount less than R6 500 in respect of a month.


The benefit to a company located in a SEZ is the removal of the age restrictions of 18 to 29 years of age. The purpose of this incentive is to encourage employers within a SEZ to employ young and low experienced workers. By claiming the ETI, the employer can reduce the amount of PAYE tax payable by calculating the amount of total ETI in respect of all qualifying employees⁸. This incentive can be claimed through the monthly employer declaration form obtained from SARS⁹.

The Atlantis SEZ does not qualify for the ETI with the age limitations removed as the SEZ has not been approved by the Minister of Finance. Atlantis SEZ may, however, access this incentive for qualifying employees between the age of 18 and 29. The ETI may be applied for a maximum period of 24 months per qualifying employee.

The ETI ceases to apply in respect of any year of assessment commencing on or after 1 January 2029.

Ordinarily, the ETI would be administered by SARS.

At present, the SEZs approved by the Minister of Finance, qualifying for section 12R, section 12S and the



The Minister of Trade and Industry must, after taking into account the recommendations of the adjudication committee, approve an industrial project as an industrial policy project, either with or without preferred status

7. SARS 'Employment Tax Incentive'.

8. SARS 'How does the Employment Tax Incentive (ETI) work'.

9. SARS 'How does the Employment Tax Incentive (ETI) work'.

ETI, include:

1. COEGA SEZ
2. Dube Trade Port SEZ
3. East London SEZ
4. Maluti-A-Phofung SEZ
5. Saldanha Bay SEZ
6. Richards Bay SEZ¹⁰.

OTHER BENEFITS OF INVESTING IN A SEZ

One-Stop-Shop Facility

A SEZ serves as a One-Stop-Shop to:

- Provide access in a timely manner for all required permits and licenses or any other information to investors.
- Prefer parallel approvals above sequential approvals and to eliminate steps in the approvals/administrative process.

The One-Stop-Shop's key features include:

- Physical Planning - the planning and development of the SEZs
- Licensing - to simplify and obtain the process of business licensing.
- Utilities - a single-point access to basic utilities required for setting up operating industrial zone and other establishments will be facilitated;
- Industrial development incentives - this will assist current and potential future tenants to understand and access the portfolio of sector-specific incentives and support measures available;
- Financing - this will make it easier for businesses in a SEZ to have easier access to investors for direct and indirect financial assistance; and
- Environmental compliance - this will assist in obtaining environmental approvals and maintaining environmental standards.³

The criteria to qualify for all of the above incentives is summarised and attached as Annexure C, following a practical example attached as Annexure D.

INCENTIVES AVAILABLE TO ALL MANUFACTURERS

In addition to the incentives that are specific to investments in SEZs, Businesses can apply and potentially receive incentives that are available to all manufacturers in the Republic. There is a wide range of incentives available to manufacturers for activities ranging from Research and Development, Innovation, Investment, competitiveness improvement and energy efficiency.

What are the duty preferences under SEZs?

A business located in a CCA within a SEZ may benefit from a full rebate on import duties and VAT for goods imported into the SEZ if the goods are exported from or remain within the SEZ and the businesses register as CCAE's.

A CCA refers to an area within a SEZ designated and controlled by SARS: Customs. CCA's are areas controlled by Customs to the extent that activities requiring registration or licensing in terms of the Customs and Excise Act, 1964 are being undertaken within the area. Only the premises where these activities are executed within the CCA will be subject to customs control. There may be more than one (1) CCA within a single SEZ and the entire SEZ may be a CCA.

REGISTRATION

In order to benefit from the full rebate of duty, a registration and/or a license is required with SARS Customs. The rebate is administered by SARS.

A SEZ Operator must apply by using the following forms:

- Main application: Form DA 185 – ANNEXURE E1 (this form is currently unavailable)
- Operator application: Form DA 185.4A11- ANNEXURE E2
- Importer application: Form DA 185.4A1 – ANNEXURE E3
- Exporter application: Form DA 185.4A2 – ANNEXURE E4
- Rebate user application: Form DA 185.4A3 – ANNEXURE E5

A CCAE must apply by using the following forms:

- Main application: Form DA 185 – ANNEXURE E1
- Importer application: Form DA 185.4A1 – ANNEXURE E3
- Exporter application: Form DA 185.4A2 – ANNEXURE E4
- Rebate user application: Form DA 185.4A3 – ANNEXURE E5
- Storage Warehouse (Customs Controlled Area Enterprise) – (Sections 19A, 21, 21A and Rule 21A.10) DA 185 4B9 - (ANNEXURE E7).

OR

- Manufacturing Warehouse (Customs Controlled Area Enterprise) – (Sections 19A, 21A, 27 and Rule 21A.10) DA 185.4B10 - (ANNEXURE E6).

Application forms with all supporting documents must be hand-delivered or posted to the nearest Customs office, the address of which can be found on SARS' website. Each registration/licence is required to be submitted separately with its own DA185.

Once registered, the registration remains valid, but the license is only valid for a period of one calendar year, starting on 1 January ending on 31 December. There are no fees payable in obtaining a license or registering.

New registrations for businesses that do not have an existing customs code must be completed on E-filing through the Registration, Licensing Administration system.

APPLICATION

A CCAE is governed by section 21A(1) of the Customs and Excise Act and may be subject to such controls and procedures as the Commissioner for the SARS may prescribe by rule, which may include exemption from customs duties and levies.

A registered CCAE may utilize Rebate Item 498 provided in Schedule 4 to the Customs and Excise Act, allowing for an import duty rebate on imported goods of any description. This includes machinery and assets to be used in production¹¹ However, all customs and excise (import) duties will be payable on products sold in the domestic market. In the event of exportation of the goods manufactured, all customs and excise duties will be suspended¹².



11. DTIC http://www.thedtic.gov.za/wp-content/uploads/SEZ_Guide.pdf

12. SARS http://www.thedtic.gov.za/wp-content/uploads/SEZ_Tax.pdf

13. This refers to the SACU area, which includes South Africa, Botswana, Lesotho, Namibia and Eswatini.

An extract of the provisions under Rebate 498.00 in Schedule 4 Part 6:

Rebate Item	Tarif Heading	Rebate Code	CD	Description	Extent of Rebate
498.00	<p>IMPORTED GOODS ADMITTED UNDER REBATE OF DUTY FOR USE IN SPECIFIED ACTIVITIES IN THE CUSTOMS CONTROLLED AREA (“CCA”) CONTEMPLATED IN SECTION 21A NOTES:</p> <p>For the purposes of this item and the application of any provisions of Schedule No. 4:</p> <ol style="list-style-type: none"> 1. Goods may only be entered under item 498.01 by a registered CCA enterprise as contemplated in section 21A. 2. Goods may only be entered under item 498.02 by a registered SEZ operator as contemplated in rule 21A.04. 3. Goods imported under item 498.00 must be entered thereunder whether or not the goods are liable to any duty. However, any goods imported for storage in a CCA enterprise may not be entered under item 498.00. 4. Goods imported under item 498.00 or goods produced or manufactured therefrom may not be removed from a CCA for consumption in the common customs area¹³ except if the goods have been entered at the office of the Controller and the duty due thereon has been paid. 5. The expression “infrastructure” shall be limited to the basic structural elements permanently installed in a CCA (including, e.g. sanitation, electricity, roads, bridges, buildings and the like). 6. The movement of any goods to or from a CCA enterprise, including the movement of goods to another enterprise, any other rebate user outside the CCA or partly manufactured goods to any rebate user shall be subject to the rules for section 21A. 				
498.01	00.00	01.00	00	Goods of any description imported by a registered CCA enterprise into the CCA	Full duty
498.02	00.00	01.00	02	Goods of any description imported by a registered SEZ Operator for use in the construction and maintenance of the infrastructure of a CCA in a SEZ.	Full duty

On importation, a declaration is submitted to the customs authorities (SAD500). The declaration states that the goods are imported under Rebate Item 498.01 or 498.02. The rebate of customs duty and VAT will automatically be applied. If a business makes use of a clearing agent, this instruction is to be provided on a clearing instruction for each importation.

A key requirement is that imports under rebate 498 are only allowable under the customs code of the registered CCAE or SEZ Operator and not third parties.

Compliance requirements

In order to access and keep the duty preferences discussed above, certain provisions need to be complied with throughout the course of operation of the SEZ. The following sections of the SEZ Act and the regulations require operators to supply the DTIC and SARS with the following information:

THE SEZ ACT

Governance and management of the SEZ

Section 25 of the SEZ Act prescribes how the SEZ is established. Upon designation of an area as a SEZ, the licensee must do a number of things, including:

- establish an entity to manage the SEZ; and
- provide the entity with the resources and means necessary to manage and operate the SEZ, including the transfer of ownership or control of the land comprising the area designated as a SEZ.

Where the licensee is a national or provincial government or a public entity, the entity must be established as a national government business enterprise or a provincial government business enterprise contemplated in section 1 of the Public Finance Management Act. Where the licensee is a municipality or municipal entity, the entity must be established as a municipal entity contemplated in section 1 of the Municipal Systems Act. In the case of a public-private partnership licensee, the entity must be established as a company.

A licensee must appoint a Special Economic Zone Board, which must be responsible for the efficient governance and management of the business affairs of that SEZ entity. This Special Economic Zone Board must manage that SEZ entity in accordance with the Public Finance Management Act if the licensee is national or provincial government or a public entity; in accordance with the Municipal Systems Act and the Municipal Finance Management Act if the licensee is a municipality or municipal entity; or if the licensee is a public-private partnership—

- a) at national or provincial government level, in accordance with regulation 16 of the National Treasury Regulations issued under the Public Finance Management Act and the Companies Act; or
- b) at municipal level, in accordance with the provisions of section 120 of the Municipal Finance Management Act and any relevant regulations issued in terms of that Act.

Strategic plan for the SEZ

Section 26 states that the Special Economic Zone Board must develop and implement a strategic plan within the framework of the SEZ strategy contemplated in section 6 in order to achieve the mandate of, perform the functions of and comply with the conditions for that SEZ. The strategic plan must then be reviewed on an annual basis and submitted to the Minister of DTIC at least three months before the end of each financial year or at a later date determined by the Minister. Finally, the Special Economic Zone

Board must provide the Minister with such information and documentation as the Minister may reasonably require in connection with the affairs of that SEZ entity.

Business and financial plan of SEZ

Section 27 sets out the compliance and monitoring requirements for the business and financial plan. A Special Economic Zone Board must, at least two months before the end of each financial year or at a later date determined by the Minister of DTIC, submit to the Minister for approval a business and financial plan—

- containing a projection of the revenue and expenditure of that SEZ entity in respect of the ensuing financial year; and
- covering the affairs of that SEZ entity for each of the two immediately following financial years.

Reporting and financial statements of the SEZ

Section 28 prescribes how financial information must be reported. This includes that the Special Economic Zone Board must keep full and proper records of the financial affairs of the SEZ entity contemplated in section 25, prepare financial statements for each financial year in accordance with generally accepted accounting practice, submit those financial statements within three months after the end of the financial year to the Auditor-General for auditing; and submit within five months of the end of the financial year to the Minister of DTIC—

- an annual report on the activities of that SEZ entity during that financial year;
- audited financial statements of that SEZ entity for the previous financial year; and
- the report of the Auditor-General on those statements.



For the SEZ to function smoothly and effectively, monitoring and evaluation is necessary



The annual report and financial statements referred to above must fairly present the state of affairs of that SEZ entity and its performance against predetermined objectives for the financial year concerned; and include the following information:

- any material losses through criminal conduct and any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year concerned;
- any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
- any losses recovered or written off; and
- any other matter that may be prescribed.

OVERVIEW

These sections above basically require the SEZ operators to supply the DTIC with:

- A business and financial plan, annually.
- Financial statements, annually.
- An annual report.
- A progress report on the implementation of the one-stop shop facility, biannually.
- A progress report on the supplier development programme, annually.
- A performance progress report, quarterly.
- An infrastructure progress report, monthly.

For the SEZ to function smoothly and effectively, monitoring and evaluation, as explained above, is necessary. This will enable all SEZ stakeholders to determine whether the resources committed are

sufficient, are being used appropriately, whether capacity within SEZs is sufficient and whether the SEZs are doing what they plan to do.

THE CUSTOMS AND EXCISE ACT

Although the SEZ Programme is an incentive programme developed by the Department of Trade, Industry and Competition, the benefits offered under the Customs Act require the administration and enforcement thereof to fall under the ambit of SARS: Customs' jurisdiction. The following requirements and framework is required by a SEZ Operator:

Establishment

- SARS registration and licensing as a CCA and continued maintenance of the registration
- SARS Office functions and requirements
- Management of SARS enquiries and audits

Duties of the CCA Operator

- Requirements for the CCA Security
- Maintenance of the CCA premises
- Access control requirements
- Liability for duty for the SEZ Operator
- Customs Accreditation process and requirements
- Other Government agency requirements
- Training requirements for all employed by the SEZ Operator



SEZs and “localisation”



As stated earlier, SEZs must keep in mind that there is a ‘localisation’ drive that is at the heart of the government’s economic reconstruction and recovery policy. ‘Localisation’ is a government policy to drive the procurement of locally produced goods and services. Localisation manifests in 3 sectors, namely, the industrial, trade and government sectors. Each of these sectors consists of various implementations mechanisms for localisation. ‘Designation’ operates as a legislative mechanism under the government sector that requires use of local products and that products are produced locally. Under the industrial sector, master plans serve as a key implementation mechanism. The Renewable Energy Sector Master Plan is still being drafted and is aimed to be in place in March 2022.

THE SOUTH AFRICAN RENEWABLE ENERGY SECTOR MASTER PLAN (SAREM)

SAREM focuses on the industrialisation of the renewable energy value chain (GreenCape, 2021). It aims to identify opportunities to develop industrial capacity and the implementable private and public sector levers to enable this (GreenCape, 2021). This means that the master plan will identify key components and materials in the value chain, having the potential to be localised. The masterplan, therefore, sets out areas where investment is required in the renewable energy sector (GreenCape, 2021). The Atlantis SEZ will adopt the SAREM as soon as it is implemented. The SAREM makes it easier for investors to invest in Atlantis SEZ by creating the appropriate conditions for investment.

Annexure A

HOW TO LOCATE YOUR BUSINESS IN A SEZ

Checklist on how to locate your business in a SEZ (see page 4)

Step 1: Check whether your business is the type that can be located in a SEZ.

Step 2: Ensure that you have the licences, registrations or permits required by the business or service to conduct its operation.

Step 3: Prepare a business plan.

Step 4: Provide information to show that you conduct a business or render a service prescribed by the Minister in terms of section 24(4).

Step 5: Indicate the extent to which the applicant's business achieves the purpose of SEZ set out in section 4 and

Step 6: Comply with any other criteria that the Minister may prescribe in terms of the 2016 Regulations.

SEZs and “localisation”

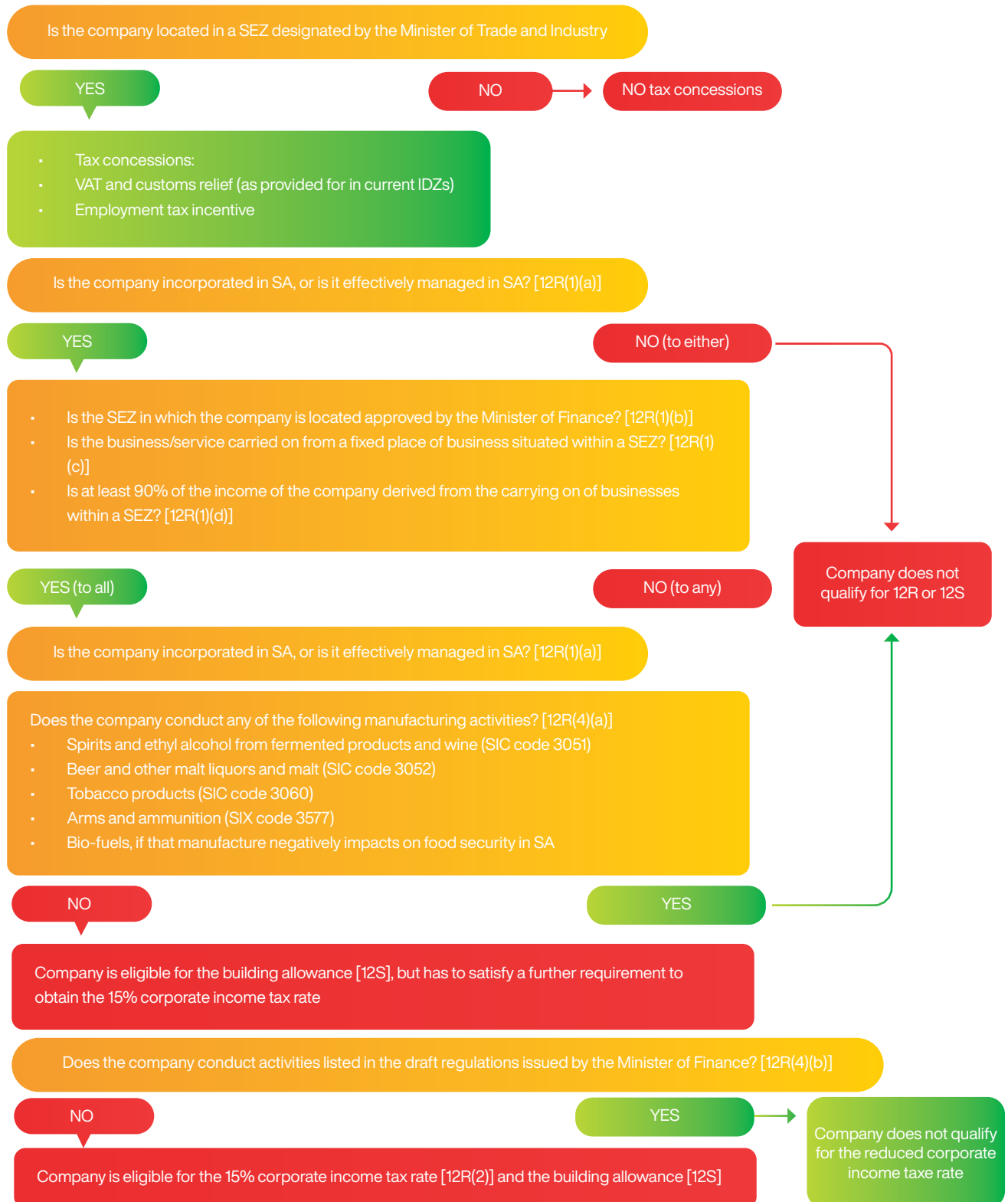
ACTIVITIES TO WHICH SECTION 12R OF THE INCOME TAX ACT DOES NOT APPLY

- Spirits and ethyl alcohol from fermented products and wine
- Beer and other malt liquors and malt
- Tobacco products
- Arms and ammunition
- Bio-fuels if that manufacture negatively impacts on food security in SA
- Commission trade, except of motor vehicles and motor cycles; sale, maintenance and repair of motor vehicles and motor cycles; retail of automotive fuel
- Wholesale trade, except of motor vehicles and motor cycles
- Retail trade, except of motor vehicles and motor cycles
- Land transport and transport via pipelines
- Water transport
- Air transport
- Warehousing and support activities for transportation; activities of travel agencies
- Postal and courier activities
- Short term accommodation activities
- Food and beverage service activities
- Telecommunications
- Computer programming, consultancy and related activities
- Data processing, hosting and related activities
- Financial intermediation, except insurance and pension funding
- Insurance and pension funding, except compulsory social security
- Activities auxiliary to financial service and insurance activities
- Real estate activities
- Legal and accounting activities
- Management consultancy activities
- Architectural and engineering activities; technical testing and analysis
- Scientific research and development
- Advertising; market research and public opinion polling
- Photographic activities
- Renting of machinery and equipment, without operator, and of personal and household goods
- Activities of employment placement agencies; temporary employment agency activities
- Travel agency activities
- Security and investigation activities
- Combined facilities support activities; cleaning activities
- Packaging activities; debt collection services; credit rating agency activities; photocopying, document preparation and other specialized office support activities
- Repair of personal household goods; repair of computers and communication equipment
- Source: GN 446 of 15 April 2016: Notice in terms of section 12R of the Income Tax Act, 1962, regarding activities to which section 12R does not apply (Government Gazette No. 39930)

Annexure C

CRITERIA TO ACCESS SEZ INCENTIVES

Annexure C captures all necessary criteria to access the SEZ incentives³.



Annexure D

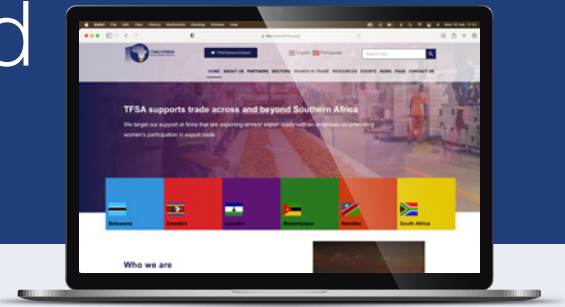
PRACTICAL COMPARISON

Practical example:

ABC Solar is a solar panel manufacturer located in Uptington and is looking to expand its manufacturing capacity and is considering moving its operation into a SEZ. ABC Solar has an annual income of R60m and a taxable income of R10m. They import R25m worth of components annually, of which about R5m attracts duties of 15% and R3m attracts 22% duties. ABC Solar also sells R35m finished products domestically, and R25m is exported to Europe and Canada. ABC Solar employs 50 people, of which 10 employees above the age of 45 earn R200 000 per annum; 10 employees above the age of 50 earn R500 000; and 30 employees below the age of 30 earn less than R60 000 per annum.

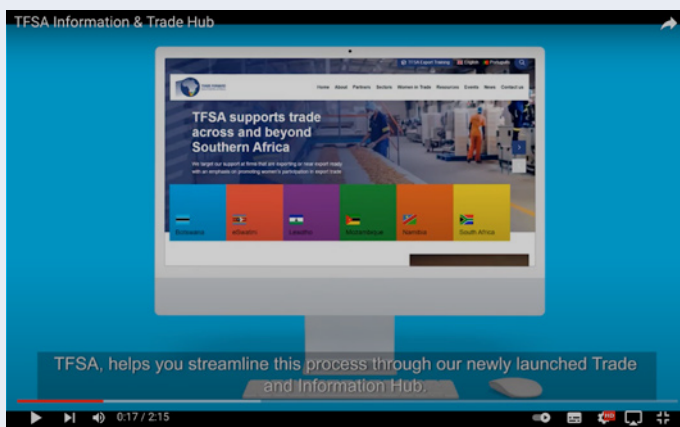
	ABC Solar operates outside a SEZ	ABC Solar operates within a SEZ	Quantifiable difference
Corporate Tax	ABC Solar will pay 28% corporate tax on its taxable income of R10m. Totalling an amount of R2 800 000 allocated to corporate tax.	When operating within a SEZ, the corporate tax payable by ABC Solar will only be 15% of its taxable income. Totalling an amount of R1 500 000	ABC Solar saves R1 300 000 on corporate tax
VAT and Customs relief	ABC Solar will be faced with the normal 15% VAT rate when purchasing input products from South Africa. The input components which attract duties, 15% and 22% in this case, will be payable when importing these goods.	ABC Solar will have VAT suspension on input products procured from South Africa. ABC Solar will have no duty or VAT liabilities when importing goods under Rebate Item 498.	ABC Solar's savings on customs and excise duties: R910 000
Employment Tax Incentive	ABC Solar will have access to the employment tax incentive for all employees between the ages of 18 to 29. Normal employment tax rates will be applied to employees older than 29 years, based on different salaries. ABC Solar will pay 18% employment tax on 30 employees; 25% on 10 employees, and 35% on 10 employees. Totalling an amount of R2 574 000.	ABC Solar will have access to the employment tax incentive for the 30 employees below the age of 30 in its company, since 30 employees earn a salary of below R60 000 per annum in ABC Solar.	ABC Solar saves R324 000 on employment tax when operating in a SEZ.
Total savings of ABC Solar when operating in a SEZ:			R2 534 000 p.a.
Building allowance	ABC Solar will not be able to access a building allowance to expand its capacity since it operates outside a SEZ.	The building allowance, however, is not an immediate cash benefit but rather a deferment of tax payment. The building allowance tax relief of 10%, at the corporate tax rate of 28%, will be available over a 10-year period through the write off of the buildings.	

How to use Trade and Information Hub



Trade Forward Southern Africa understands that Southern African businesses face huge challenges and barriers in growing their market share in regional and global export trade, not least due to complex trade and customs standards and regulations that vary significantly across sectors and countries. As a response to these challenges the TFSA Trade and Information Hub was created to assist SACU+M businesses to:

- 01 Have easy access to verified relevant global trade information (News)
- 02 Build capacity to become or improve their export readiness through the use of existing tools (Home page, Resources)
- 03 Strengthen their institutional knowledge on export trade regulations and requirements through accessing a free, self-paced learning platform to guide and inform how to navigate global export trade (TFSA School of Export)
- 04 Link to in-country business support organisations that have been identified to support businesses to address key regulatory compliance requirements through specific value chain interventions (Sectors, Partners)
- 05 Register for live, interactive webinar demonstrations on how to navigate existing online tools designed to facilitate and grow export trade (subscribe to the TFSA YouTube channel to stay up-to-date and access our archive)



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