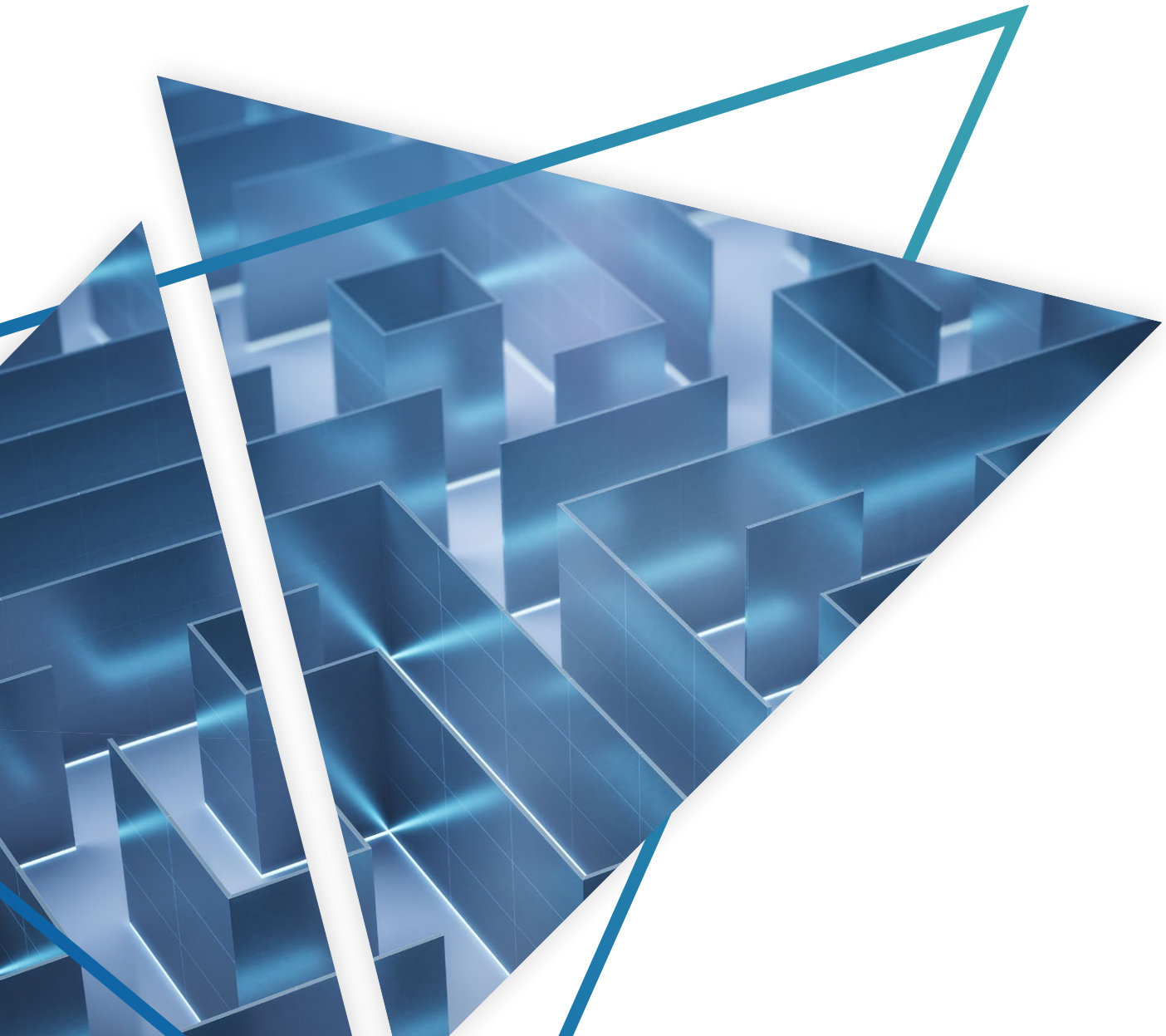


# Tax & Exchange Control

ALERT | 6 February 2025



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### KENYA

Not so special after all? An analysis of the impact of the Business Laws (Amendment) Act 2024 on taxation of Special Economic Zones

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## Not so special after all? An analysis of the impact of the Business Laws (Amendment) Act 2024 on taxation of Special Economic Zones

Special Economic Zones (SEZ) were introduced in Kenya under the Special Economic Zones Act, 2015 with the intention of supporting the achievement of Kenya's Vision 2030, and are primarily aimed at enhancing Kenya's trade potential. As is the case with Export Processing Zones (EPZ), investors in the SEZs were granted favourable tax benefits, including corporation tax on domestic sourced income at the rate of 10% for the first 10 years and 15% for the 10 years thereafter. No capital gains tax as well as no withholding tax on dividends, 0%, interest and management fees and royalties for the first 10 years, 5% thereafter.

In 2023, the Medium-Term Revenue Strategy (MTRS) was published by National Treasury with the main aim of "raising sufficient resources for the implementation of the Government's priority programmes" through providing a "comprehensive approach of undertaking effective tax system reforms to boost tax revenues". Part of the amendments suggested in the MTRS was a review of corporation tax to "rationalise exemptions on entities" to expand the tax base. In line with the MTRS, the president assented to the Business Laws (Amendment) Act, 2024 on 27 December 2024 through which key changes to business laws were introduced. In this alert we focus on the changes to the Special Economic Zones Act, CAP 517A (Act).

### **Broader definition of business process outsourcing**

The Act has now expanded the definition of business process outsourcing to include outsourcing information technology-intensive processes to external providers. This clears up previous ambiguities, ensuring clarity in the scope of business process outsourcing services under the law.

### **Minimum investment amount**

Section 4 now empowers the Cabinet Secretary for Investments, Trade, and Industrialization (Cabinet Secretary) to set a minimum investment amount to be invested in an area declared as a SEZ, based on recommendations from the Special Economic Zones Authority.

### **Goods sold within a SEZ's customs-controlled area**

Section 8 of the Act clarifies that goods sold to any person that remains within the customs-controlled area of a SEZ are not considered to have entered the customs territory. This means that these goods are exempt from customs duties, taxes and regulations that apply to goods in the customs territory and enjoy the Act's benefits.

### **Expanded functions of the Special Economic Zones Authority**

The Special Economic Zones Authority now has broader powers, including:

- In collaboration with the Cabinet Secretary, setting investment criteria and thresholds
- Reviewing applications and issuing SEZ permits
- Establishing and managing a 'one-stop shop' to assist SEZ businesses with permits and approvals

# Not so special after all? An analysis of the impact of the Business Laws (Amendment) Act 2024 on taxation of Special Economic Zones

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## Introduction of business service permits

Section 30A of the Act now requires businesses offering non-incentivised services within SEZs to apply for a business service permit.

## Tax benefits and incentives

Section 35(5) clarifies that tax benefits for SEZ developers, operators and enterprises last up to 10 years from the license issuance date, providing greater certainty for investors but also reducing the period for tax exemption.

Previously, the law provided for some incentives and benefits in a graduated phase. For instance, the corporate income tax rate was 10% for the first 10 years and increased to 15% for the subsequent 15 years. With this new change it is important that the Government monitors how this impacts long-term investment behaviour.

## Stricter penalties for record keeping violations

Penalties for failing to maintain proper accounts and records have increased from a maximum of KES 300,000 to KES 5 million, with a six-month maximum prison sentence upon conviction.

## Conclusion

Businesses operating within SEZs will benefit from the certainty but need to also be mindful of the new requirements and potential penalties. The amendments will simplify processes, guarantee a 10-year incentive period, and broaden the scope of businesses within SEZs, making them more attractive to investors. However, the Cabinet Secretary still needs to release regulations to implement some provisions.

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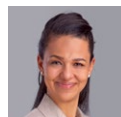
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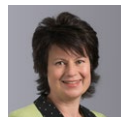
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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