

Industrial Zones, Export Processing Zones, Economic Zones And High-Tech Zones

Legislation

The LI, the Law on Export and Import Duties 2016 (“Law on Export and Import Duties”) constitute the principal legal base for the establishment and operation of Industrial Zones (“IZs”), Export Processing Zones (“EPZs”) and Economic Zones (“EZs”). High-tech Zones (“HTZs”) alone are governed by Law on High Technologies 2008, as amended by the Law on Corporation Income Tax amended in 2013 and the LI (“Hi-tech Law”).

Guiding the laws is Decree No. 31/2021/ND-CP dated 26 March 2021 of the GoV (“Decree 31/2021”), detailing process of and procedures for investment registration, investment incentives and supports applicable to investment projects as well as investors’ activities carried out in such zones, as amended by Decree No. 10/2024/ND-CP dated 1 February 2024 (“Decree 10/2024”), regulating HTZs; Decree No.35/2022/ND-CP dated 28 May 2022 (“Decree 35/2022”), providing for IZs (which include IZs, EPZs, auxiliary IZs, specialized IZs, eco-industrial parks and hi-tech IZs), and EZs (which include coastal EZs, border-gate EZs and special EZs), as amended by Decree No.70/2023/ND-CP dated 18 September 2023; Decision No.53/2004/QD-TTg dated 5 April 2004 of the PM (“Decision 53/2004/QD-TTg”), on a number of policies to encourage investment in HTZs; Decision No. 10/2021/QD-TTg dated 16 March 2021 of the PM, on eligibility of hi-tech enterprises (“Decision 10/2021/QD-TTg”); Decision No.29/2021/QD-TTg dated 6 October 2021 of the Prime Minister, providing for special investment incentives (“Decision 29/2021/QD-TTg”); and several implementing Circulars in connection to environment, construction, labour, taxation, customs procedures, etc. in

these zones.

Features of IZs, EPZs, EZs and HTZs

IZs mean the zones being defined by geographic boundaries, being specialized in production of industrial goods and provision of services satisfying the industrial production needs, established by the GoV or the PM's decision, and containing IZ enterprises and export processing enterprises ("EPEs"). Unless each type is otherwise subject to specific regulations, IZs are classified into different types such as:

(i) EPZ: means an IZ specially intended for manufacture of exported goods, supply of services meeting the demands of production of exported goods and export activities; and separated from outside in accordance with the regulations so applied to free trade zones provided in laws on import and export duties;

(ii) Auxiliary IZ: means an IZ specializing in manufacture of auxiliary industrial products and supply of services satisfying the needs of manufacture of these products; and having at least 60% of the IZ's total industrial land area used for attracting investment projects to produce supporting industry products in accordance with the laws on development of supporting industries;

(iii) Specialized IZ: means an IZ specializing in the manufacture and provision of services for the manufacture of products of a particular industry or trade; and having at least 60% of the IZ's industrial land area used to attract investment projects in this industry or trade;

(iv) Eco-industrial park means an IZ in which enterprises get involved in cleaner production make effective use of natural resources and enter into manufacturing cooperation and affiliation in order to tighten industrial symbiosis; and the criteria specified in Decree 35/2022 are satisfied;

(v) High-tech IZ: means an IZ attracting high-tech and information technology investment projects on the list of industries and trades with special investment incentives in

accordance with the laws on investment, projects involving technology transfer on the list of technologies encouraged for transfer in accordance with the laws on technology transfer, technology incubators, science and technology business incubators under the provisions of laws on high technology, laws on science and technology, investment projects on creative start-ups, innovation, research and development, education and training; and having at least 30% of the IZ's industrial land area used to attract these investment projects.

EZ means an area which is defined by geographical boundaries; includes several functional zones such as: non-tariff areas, bonded warehouse areas, EPZs, IZs, entertainment areas, resorts, urban areas, residential areas, administrative areas and others; is established to serve the purpose of calling for investments, promoting socio-economic development and maintaining national defense and security; includes EZ enterprises and EPEs; and is established by the Prime Minister's decision. EZs comprise different types as follows:

- (i) Coastal EZ: means an EZ established in a coastal area and in the vicinity of the coastal area;
- (ii) Border-gate EZ: means an EZ established in a land border area and the area adjacent to the land border area; and
- (iii) Special EZ: means an EZ established in a key economic zone, development corridor, development driving area or area with a similar role, identified in the regional planning.

Having the same features, HTZs as defined in Hi-tech Law and Decree 10/2024 however is a place to concentrate and link research and development activities, high technology application; high technology incubation, high technology enterprise incubation; high technology human resource training; production and trading of high technology products, providing high technology services, multifunctional technical economy. It is noted that EPZs, bonded warehouses, tax suspension warehouses and dwelling buildings may be in an HTZ.

Enterprises operating within the HTZs include enterprises investing in construction and doing business of HTZ infrastructure; hi-tech enterprises; export processing enterprises in HTZs; and the State-owned enterprises in electricity, water, and telecommunications. Types of high-tech activities in HTZs include high-tech research and development; high-tech application; high-tech incubation, high-tech enterprise incubation; high-tech human resource training; fairs, exhibitions, high-tech demonstrations, demonstrations of high-tech products from research results, high-tech application, high-tech transfer; production and trading of high-tech products; provision of high-tech services.

Under the LI, IZs, EPZs, EZs and HTZs are not typical vehicles for foreign investment, however, the IZs and EPZs play an important role in attracting foreign investment in Vietnam. That is why they are included herein. The purpose of IZs and EPZs is to provide an efficient and single base for manufacturing, processing and assembling products (for export only in the case of EPZs). Foreign capital projects are encouraged to locate in the zones by the assurance of modern infrastructure, such as good transportation and utility services, as well as the availability of necessary services.

In principle, an investment in development of an IZ, EPZ, EZ or HTZ must follow the same procedures and be governing by the same regulations as applicable to foreign investment in the zones as well as in rest of the country. To attract more investments in infrastructures, several preferential treatments and/or incentives are provided to foreigners who invest in developing IZs and EPZs, among others, easier licensing, longer duration (up to 70 years) and tax incentives.

Advantages of Locating in IZs, EPZs, EZs and HTZs

The application procedures for a new enterprise inside IZs, EPZs, EZs or even HTZs are similar to those applicable to the

rest of the country, but quite easier in terms of consideration and licensing. For example, regarding investment projects performed in an IZ or HTZ, the investment licensing authority shall consider granting approval for both investment policy and investors without holding a land use right auction or bidding to select investors; moreover, the Management Board of IZs, EPZs, HTZs, and EZs is the agency that registers investment and performs the State management tasks on investment activities in IZs, EPZs, HTZs, and EZs within the scope of its tasks and powers, and provisions of relevant laws. Additionally, investors with investment projects in IZs, EPZs, EZs or HTZs are supported by competent State agencies in carrying out administrative procedures on investment, enterprises, land, construction, environment, labor and trade under the “on-site one-stop shop” mechanism, providing support for labor recruitment and other related issues during implementation of their projects.

For the investment project performed in an IZ, EPZ, EZ or HTZ, the investor is entitled to carry out the following activities:

- (i) Leasing or purchasing warehouses and depots to serve their business operation;
- (ii) Using and paying for use of technical infrastructure and service facilities, including systems of roads, electricity supply, water supply and drainage, communications, wastewater treatment, waste treatment and other public facilities (“infrastructure use charges”);
- (iii) Transferring and receiving the land use rights, leasing out and subleasing out land on which technical infrastructure has been constructed to construct buildings, offices and other works for their business operation in accordance with the law on land and real estate business;
- (iv) Leasing out or subleasing out their buildings, offices and other works for their business operation in accordance with the law on land and real estate business;

(v) Constructing homes for laborers working in IZs and EZs to rent, buy, or hire-purchase; Renting, buying, or hire-purchasing homes and accommodation facilities for laborers in IZs, EZs, and HTZs;

(vi) Carrying out other activities specified in the LI, Decree 31/2021, GoV's regulations on IZs, EPZs, EZs and HTZs, and relevant law.

According to Decree 31/2021, Decree 35/2022 and Decree 10/2024, EZs and HTZs (including concentrated information technology zones established under the provisions of the GoV) are considered as those with extremely difficult socio-economic conditions; IZs, EPZs and industrial clusters established under the provisions of the GoV fall on the list of areas with difficult socio-economic conditions to be entitled to investment incentives, and IZs and EPZs established in the listed areas with extremely difficult socio-economic conditions shall enjoy investment incentive applicable to them. Investors in IZs, EPZs, EZs and HTZs enjoy incentives related to Corporate Income Tax ("CIT"), import tax and Value-Added Tax ("VAT"), which are more favourable than those applicable to investors outside.

10% CIT rate with four-year holiday commencing from the date taxable income are first making and nine-year 50% reduction will be applicable to enterprises newly established from investment projects in IZs or EPZs in areas with extremely difficult socio – economic conditions, EZs and HTZs, including a centralized information technology zone established under the Prime Minister's decision, for fifteen (15) years from the first year of project revenues. 17% corporate income tax rate with two-year holiday and four-year 50% reduction will be applicable to enterprises newly established in IZs and EPZs for ten (10) years (except for IZs in areas with favourable socio-economic conditions, that means urban districts of special-class urban centres, grade-I centrally-run cities and grade-I provincial cities, including districts of special

grade urban centres, grade-I centrally-run urban centres and grade-I provincial urban centres newly established from districts since 1 January 2009); in case the IZ is in both favourable and unfavourable areas, the determination of tax incentives for the IZ shall be based on the actual location of the investment project in the field.

Investors in IZs, EPZs, EZs and HTZs enjoy also the modern infrastructure and the availability of utility services and others. But, instead of these, they bear a higher price for the use of land and infrastructures and are often required to pay the land and infrastructure rental for the entire duration. This reflects the negative side of the IZs, EPZs, EZs and HTZs. However, except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing; land investment projects in IZs or EPZs in the areas with extremely difficult socio-economic conditions, EZs, and HTZs are exempt from non-agricultural land use tax; and the land of investment projects in IZs and EPZs are entitled to 50% reduction of payable tax amount.

Enterprises newly established from investment projects (except for mining projects; production and trading of goods and services subject to special sales tax other than automobile manufacturing) in IZs or EPZs in areas with extremely difficult socio – economic conditions, EZs, HTZs; or IZs and EPZs where goods imported to create their fixed assets are exempted from import tax, including:

- (i) Equipment and machinery;
- (ii) Special-use means of transport included in technological lines directly used for manufacturing activities of the project;
- (iii) Components, parts, separate parts and spare parts for synchronized assembly or synchronized operation of machinery and equipment;
- (iv) Raw materials used for manufacture of machinery and

equipment, or manufacture of components, parts, separate parts and spare parts of machinery and equipment;
(v) Building materials which cannot be domestically produced yet.

Raw materials, supplies and components which cannot be domestically manufactured and are imported for production of investment projects in IZs or EPZs in areas with extremely difficult socio – economic conditions, EZs, and HTZs are exempt from import duties for a period of 5 years from their manufacturing commencement date.

Furthermore, goods exported from non-tariff zones, including EPZs and EPEs (i.e. those established and operating within an EPZ or those specializing in manufacturing exported products within an IZ or EZ), tax-suspension warehouses, bonded warehouses, tax-suspension zones, special economic-trade zones, trade-industrial zones, and zones with other names established under PM decisions in EZs and border-gate EZs for exports to foreign countries; goods imported from foreign countries into non-tariff zones for use in non-tariff zones only; goods transported from one non-tariff zone to another; are not subject to import tax or export tax.

For the EPEs operating within IZs, EZs or HTZs and enterprises in other non-tariff zones, CEPT/AFTA tariff will be applicable in case they export the products to domestic market provided that the products contain at least 40% elements originating from ASEAN countries; and will be exempt from import tax when they import products manufactured, processed, recycled or assembled in a non-tariff zone without using imported raw materials or components into the domestic market.

Goods temporarily imported and re-exported and goods temporarily exported and re-imported; raw materials and supplies imported for manufacture or processing of goods for export in accordance with manufacturing or processing for export contracts with foreign parties; goods and services

purchased and sold as between foreign parties and non-tariff zones, and purchased and sold as between non-tariff zones; are not subject to VAT.

In addition, value-added tax rate of zero per cent (0%) is applicable to (i) construction and installation activities in non-tariff zones; (ii) goods sold and services directly provided to organizations and individuals in non-tariff zones (meaning any such entity who has registered business or other cases as stipulated in the regulations of the PM) and consumed therein, which are considered as exported goods and services.

In the case where an IZ or EPZ already established under the Government's regulations is removed from the planning by a competent authority or approved to be converted to another use purpose or an investment project on construction and business of the infrastructures of IZs and EPZs ceases to operate in accordance with the provisions of the laws on investment, investment projects implemented in IZs and EPZs may continue to enjoy investment incentives in accordance with the provisions of the Investment License, Business License, Certificate of Investment Incentives, Investment Certificate, Investment Registration Certificate, Decision on Investment Policy, Decision on Approval of Investment Policy or other documents of competent State authority, which have regulations on investment incentives (if any of those papers are available) or according to the provisions of the laws in force at the time of investment in the IZ or EPZ (in the absence of such documents).

In addition, investment projects on construction of homes, service works and public utilities for employees working in IZs, EZs and HTZs are entitled to incentives in accordance with the laws on construction of social housing and other provisions of relevant laws.