



# **Special Tax Zones** in the Era of International Tax Coordination

Editors: Pasquale Pistone, Jan de Goede and Antti Laukkanen

**IBFD**



# Special Tax Zones in the Era of International Tax Coordination

## Why this book?

This book contains a comprehensive analysis of special tax zones, addressing their issues from the perspectives of comparative, international and European tax law. It is the result of the work of an IBFD research group, involving academics and practitioners from around the world and covering 15 countries from Europe, North and South America, Africa and Asia. Special tax zones may present significantly different features, but all share the element of allowing a preferential tax treatment for pursuing genuine regulatory goals. Based on such narrow understanding of special tax zones, the book argues for their clear separation from BEPS-related practices and supports the view that international tax law should limit external interference in tax policies of the countries promoting special tax zones. After an introduction, which defines the scope of the study and its methodology, the book contains topical studies and country surveys. The final section of the book includes the conclusions and recommendations of the research group.

<b>Title:</b>	Special Tax Zones in the Era of International Tax Coordination
<b>Editor(s):</b>	Pasquale Pistone, Jan de Goede and Antti Laukkanen
<b>Date of publication:</b>	August 2019
<b>ISBN:</b>	978-90-8722- 549-0 (print/online), 978-90-8722- 550-6 (ePub), 978-90-8722- 551-3 (PDF)
<b>Type of publication:</b>	Book
<b>Number of pages:</b>	596
<b>Terms:</b>	Shipping fees apply. Shipping information is available on our website
<b>Price (print/online):</b>	EUR 115 / USD 135 (VAT excl.)
<b>Price (eBook: ePub or PDF):</b>	EUR 92 / USD 108 (VAT excl.)

## Order information

To order the book, please visit [www.ibfd.org/IBFD-Products/shop](http://www.ibfd.org/IBFD-Products/shop). You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform



IBFD, Your Portal to Cross-Border Tax Expertise

## IBFD

### *Visitors' address:*

Rietlandpark 301  
1019 DW Amsterdam  
The Netherlands

### *Postal address:*

P.O. Box 20237  
1000 HE Amsterdam  
The Netherlands

Telephone: 31-20-554 0100

Fax: 31-20-622 8658

[www.ibfd.org](http://www.ibfd.org)

© 2019 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: [permissions@ibfd.org](mailto:permissions@ibfd.org).

## **Disclaimer**

This publication has been carefully compiled by IBFD and/or its author, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. IBFD and/or the author are not liable for the information in this publication or any decision or consequence based on the use of it. IBFD and/or the author will not be liable for any direct or consequential damages arising from the use of the information contained in this publication. However, IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grove schuld*) on IBFD's part. In no event shall IBFD's total liability exceed the price of the ordered product. The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice.

Where photocopying of parts of this publication is permitted under article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-549-0 (print)

ISBN 978-90-8722-550-6 (eBook, ePub); 978-90-8722-551-3 (eBook, PDF)

NUR 826

---

## Table of Contents

### Part I Setting the Scene

<b>Chapter 1:</b>	<b>Introduction to Special Tax Zones</b>	<b>3</b>
	<i>Antti Laukkanen</i>	
1.1.	Preliminary matters	3
1.2.	What is a special tax zone?	5
1.3.	Structure of the book	6
1.3.1.	Topical studies	6
1.3.2.	Country survey	8
1.3.3.	Conclusions and recommendations	9

### Part II Topical Studies

<b>Chapter 2:</b>	<b>The Concept of Special Tax Zones</b>	<b>13</b>
	<i>Ana María Pita Grandal</i>	
2.1.	Introduction	13
2.2.	Analysis of the assumptions	14
2.2.1.	Special systems	15
2.2.2.	Free trade zones, customs warehousing and free ports	16
2.2.2.1.	Free trade zones	16
2.2.2.2.	Customs warehousing	20
2.2.2.3.	Free ports	20
2.2.3.	Free trade areas and customs unions	21
2.2.4.	Improper FTZs	21
2.2.5.	Tax havens	24
2.3.	Conclusions	24

<b>Chapter 3:</b>	<b>Types of Special Tax Zones</b>	27
	<i>Gilberto de Castro Moreira Junior, Flora Ferreira de Almeida. Ricardo Zequi Sitrângulo, Guilherme Froner Cavalcante Braga, Laís Helena Horta Maia, Gileno Gurjão Barreto and Caio Cezar dos Santos Pereira</i>	
3.1.	Introduction	27
3.2.	Free trade zones	28
3.3.	Customs bonded warehouses	31
3.4.	Export processing zones	34
3.5.	Free ports	36
3.6.	Specialized zones	38
3.7.	Single factories	41
3.8.	Enterprise zones	44
3.9.	Conclusions	47
<b>Chapter 4:</b>	<b>Constitutional Framework of Tax Free Zones</b>	51
	<i>Addy Mazz</i>	
4.1.	Tax incentives, concept and modalities	51
4.1.1.	Concept of incentives	51
4.1.2.	Effects of taxes	51
4.2.	Economic development and public finances	52
4.3.	Constitutional framework of tax benefits	53
4.3.1.	The principle of equality enshrined in constitutional texts	53
4.3.2.	Tax incentives and the principles of equality and ability to pay	57
4.3.3.	Justification for tax justice	58
4.3.4.	Justification for “economic” constitution	59
4.3.5.	Justification for social welfare and solidarity	60

4.4.	Latin American theory	60
4.4.1.	VII ILADT Conference (Caracas 1975)	60
4.4.2.	XXI ILADT Conference (Genoa 2002)	61
4.5.	Tax free zones and BEPS	62
4.5.1.	The current problems of free zones: The incidence of BEPS Action 5	62
4.5.2.	BEPS Action 5	62
4.5.3.	Preferential tax regimes	63
4.5.3.1.	Preferential tax regimes and BEPS Action 5	63
4.5.3.2.	Characterizing element in preferential tax regimes	64
4.5.3.3.	Economic effects of preferential regimes	66
4.5.3.4.	Substantial activity	66
4.5.3.4.1.	Concept	66
4.5.3.4.2.	Application of the nexus approach guide	67
4.6.	Tax free zones in Uruguay and the BEPS standard	68
4.7.	Conclusions	69
<b>Chapter 5:</b>	<b>Tax Policy and Special Tax Zones</b>	71
	<i>Pasquale Pistone</i>	
5.1.	Object, methodology and scope	71
5.2.	Tax incentives and the use of taxes for regulatory purposes	75
5.3.	The specific policy goals pursued by special tax zones	80
5.4.	Legal constraints	82
5.4.1.	General aspects	82
5.4.1.1.	National legal constraints	82
5.4.1.2.	Supranational legal constraints	86
5.4.1.3.	International legal constraints	89
5.5.	Tax distortions, protection of competition and the policy of international tax coordination for special tax zones	92
5.6.	Summary and conclusions	97

<b>Chapter 6:</b>	<b>Special Tax Zones from a Tax Treaty Perspective</b>	<b>99</b>
	<i>Jan J.P. de Goede</i>	
6.1.	Introduction	99
6.2.	General description of tax treaty application in STZs	101
6.2.1.	Treatment in the investor's country of residence	101
6.2.2.	Treatment in the STZ country	103
6.3.	Detailed analysis of tax treaty aspects of STZs:	
	The scope of the treaty	104
6.3.1.	Personal scope	104
6.3.2.	Geographical scope of the tax treaty	105
6.3.3.	Taxes covered	106
6.4.	Detailed analysis of tax treaty aspects of STZs:	
	The allocation provisions	107
6.4.1.	Ring-fencing provisions	107
6.4.2.	Temporary tax benefits	110
6.4.3.	Reduced tax rate or reduced tax base	110
6.4.4.	0% tax rate or full exemption of profits	111
6.4.5.	Requirements for enjoying a favourable regime in an STZ are no longer met	112
6.5.	Brief analysis of tax treaty aspects of STZs:	
	Articles 24, 25, 26 and 27	113
6.5.1.	Article 24	113
6.5.2.	Article 25	115
6.5.3.	Articles 26 and 27	116
6.6.	Some remarks on BEPS Action 6 and the new 2016	
	US Model	116
6.6.1.	Primary notes	116
6.6.2.	Special tax regimes	117
6.6.3.	Certain future changes in a country's domestic tax law	119
6.7.	Some remarks on BEPS Action 5	120
6.8.	Final remarks and conclusions	123

<b>Chapter 7:</b>	<b>Special Tax Zones and the World Trade Organization</b>	127
	<i>Reuven Avi-Yonah and Martin Vallespinos</i>	
7.1.	Tax competition and special tax zones	127
7.2.	The WTO rules and STZs	133
7.2.1.	Overview of the WTO regime	133
7.2.2.	Red-light STZs	135
7.2.3.	Yellow-light STZs	137
7.2.4.	Green-light STZs	138
7.3.	Inconsistencies in the current WTO regime	141
7.3.1.	Good intentions, but unfair outcomes	141
7.3.2.	Case study 1: Manufacturing STZs in the developing world: The Costa Rica Duty-Free Zone	143
7.3.3.	Case study 2: Manufacturing STZs in the developed world: The US DISC-FSC disputes	146
7.3.4.	Case study 3: Service/financial STZs in the developed world: The interest portfolio exemption	147
7.4.	EU State aid rules and STZs	149
7.4.1.	Overview of the EU State aid rules	149
7.4.2.	Incompatible State aid	150
7.4.3.	Compatible State aid	152
7.4.4.	State aid and STZs	153
7.5.	Conclusion	155
<b>Chapter 8:</b>	<b>Are the Special Tax Zone Policies Effective? Evidence from China's Economic and Technological Development Zones</b>	157
	<i>Li Du</i>	
8.1.	Introduction	157
8.1.1.	The relevance of effectiveness of special tax zone policies in the post-BEPS era	157
8.1.2.	Difficulties in measuring the effectiveness of the STZ policies and the reason for choosing China for analysis	159
8.2.	The evolution of ETDZs in China	161

8.2.1.	From the early 1980s to 2007	161
8.2.2.	From 2008 to present	162
8.3.	The data	163
8.3.1.	The ETDZs covered	163
8.3.2.	The regions covered	165
8.3.3.	The Chinese manufacturing survey data	166
8.3.4.	CIT burden and main economic indicators of sample regions with and without ETDZs	166
8.4.	The methodology and model	169
8.4.1.	Strategy of measuring the effectiveness of STZ policies	169
8.4.2.	The model	170
8.4.2.1.	Measuring the tax cut effects	170
8.4.2.2.	Measuring the effects of ETDZs on the main economic indicators	170
8.4.2.3.	Measuring the effects of ETDZs on the main economic indicators that result from the tax cuts	171
8.4.2.4.	Measuring the spillover effects of ETDZs	171
8.5.	The results	171
8.5.1.	The tax cut effects	171
8.5.2.	The effects of ETDZs on the main economic indicators	172
8.5.3.	The effects of ETDZs on the main economic indicators that result from the tax cuts	172
8.5.4.	The spillover effects of ETDZs	173
8.6.	Conclusion	174
<b>Chapter 9:</b>	<b>Tax Effectiveness and Efficiency: Entities in Special Tax Zones</b>	<b>189</b>
	<i>Antti Laukkanen</i>	
9.1.	Introduction	189
9.2.	Conceptual framework	190
9.2.1.	Related common concepts	190
9.2.2.	Basics of corporations	191
9.2.3.	Tax incentives: The micro perspective	191
9.2.4.	Effective tax system	193

9.2.5.	Business factors and decisions on STZ locations	195
9.2.6.	Tax incentives and corporate responsibility	196
9.3.	Effectiveness and efficiency	198
9.3.1.	Tax effectiveness	198
9.3.2.	Tax efficiency	200
9.4.	STZs, effectiveness and efficiency in practice	202
9.4.1.	Corporate tax management	202
9.4.2.	International tax framework and STZ entities	203
9.4.3.	Empirical findings on effectiveness	205
9.4.4.	Empirical findings on efficiency	208
9.4.5.	Government versus corporations on tax incentives	209
9.5.	Conclusions	212
<b>Chapter 10:</b>	<b>Free Ports for Art: Special Tax Zones as Cultural Policy Incentives?</b>	215
	<i>Sigrid Hemels</i>	
10.1.	Introduction	215
10.2.	Examples of free ports for art	215
10.3.	Tax aspects of free ports and relation to the concept of STZs	217
10.4.	Policy reasons for opening free ports for art	219
10.5.	Controversy regarding free ports and some solutions	220
10.6.	Conclusion	224
<b>Chapter 11:</b>	<b>Implications of Value Added Tax and Free Trade Zones</b>	225
	<i>Juan David Barbosa Mariño and Michelle Lucia Visbal Otero</i>	
11.1.	Introduction	225
11.2.	The current notion of FTZs	226

11.3.	Companies that may operate as FTZ entities in Latin America	228
11.3.1.	Common remarks	228
11.3.2.	FTZ administrative entities (operator users)	229
11.3.3.	FTZ industrial entities (users of goods or services)	230
11.3.4.	Commercial FTZ entities	231
11.4.	VAT and its application within the FTZ regime	231
11.4.1.	Common remarks	231
11.4.1.1.	Extraterritoriality	232
11.4.1.2.	Exclusivity and its expectations	233
11.4.1.3.	Priority of the FTZ regime over other tax regulations	235
11.4.1.4.	The FTZ regime is an exceptional regime	236
11.4.1.5.	Area requirements	237
11.4.1.6.	Principle of non-initiation of activities	238
11.4.1.7.	Non-relocation principle	238
11.4.2.	VAT treatment: An analysis of the possible operations in an FTZ regime	239
11.4.2.1.	Operations from the national customs territory to FTZs: Sales of goods	239
11.4.2.2.	Operations from the national customs territory to FTZs: Service provision	240
11.4.2.3.	Operations from FTZs to the national customs territory: Sales of goods	240
11.4.2.4.	Further operational alternatives between FTZs and the outside world	242
11.4.2.5.	Operations between FTZ industrial entities	243
11.5.	Conclusions	244
<b>Chapter 12:</b>	<b>The Possibility of BEPS through SEZs: A Critique of the South African and Kenyan SEZ Regimes Based on BEPS Action 5</b>	<b>245</b>
	<i>Ame Chimbombi</i>	
12.1.	Introduction	245
12.1.1.	Background to study	245
12.1.1.1.	Synopsis of South Africa's SEZ regime	249
12.1.1.2.	Synopsis of Kenya's SEZ regime	250
12.1.2.	Key research issues	252
12.1.3.	Chapter outline	252

12.2.	Common features of SEZs in the context of BEPS Action 5	253
12.2.1.	Introduction	253
12.2.2.	What is a harmful preferential tax regime?	255
12.2.3.	Step 1: May common features of SEZs constitute preferential regimes?	256
12.2.4.	Step 2: May common tax features of SEZs constitute potentially harmful preferential regimes?	258
12.2.4.1.	Substantial activity requirement	259
12.2.5.	Step 3: May common features of SEZs constitute actually harmful preferential regimes?	261
12.2.6.	Conclusion	262
12.3.	The South African SEZ regime in the context of BEPS Action 5	263
12.3.1.	History of the South African SEZ regime	263
12.3.2.	The South African SEZ Act	265
12.3.2.1.	Definition of SEZs in the South African SEZ Act	265
12.3.2.2.	Objectives and operations of SEZs under the South African SEZ Act	265
12.3.3.	Income Tax Act	266
12.3.3.1.	Section 12R	267
12.3.3.2.	Section 12S	271
12.3.4.	The South African regime vis-à-vis BEPS Action 5	272
12.3.4.1.	Step 1: Is the South African SEZ regime a preferential regime within the FHTP's scope?	272
12.3.4.2.	Step 2: Is the South African SEZ regime potentially harmful?	274
12.3.4.3.	Step 3: Is the South African SEZ regime actually harmful?	275
12.3.5.	Substantial activity requirement in South Africa	276
12.3.6.	Conclusion	277
12.4.	The Kenyan SEZ regime in the context of BEPS Action 5	279
12.4.1.	History of the Kenyan SEZ regime	279
12.4.2.	The Kenyan SEZ Act	280
12.4.2.1.	Definition of SEZs under the Kenyan SEZ Act	280
12.4.3.	Tax benefits under the Kenyan SEZ regime	281
12.4.3.1.	Kenyan SEZ Act	281
12.4.3.2.	Kenyan Finance Act No. 14 of 2015	281
12.4.4.	The Kenyan SEZ regime vis-à-vis BEPS Action 5	282

12.4.4.1.	Step 1: Is the Kenyan SEZ regime a preferential regime within the FHTP's scope?	282
12.4.4.2.	Step 2: Is the Kenyan SEZ regime potentially harmful?	283
12.4.4.3.	Step 3: Is the Kenyan SEZ regime actually harmful?	284
12.4.5.	Substantial activity requirement in Kenya	284
12.4.6.	Conclusion	285
12.5.	Conclusion and recommendations	286

### Part III Country Survey

<b>Chapter 13:</b>	<b>Special Tax Zones in Selected Main Jurisdictions</b>	291
	<i>Antti Laukkanen (ed.)</i>	
13.1.	Conceptual issues	291
13.1.1.	Outline of the section	291
13.1.2.	The definition of STZ	291
13.1.2.1.	Collection of countries	291
13.1.2.2.	China	293
13.1.2.3.	Madagascar	295
13.1.2.4.	Michigan	296
13.1.2.5.	Nigeria	296
13.1.2.6.	Russia	297
13.1.2.7.	South Africa	300
13.1.2.8.	Spain	301
13.1.2.9.	Turkey	302
13.1.2.10.	United Arab Emirates	304
13.1.3.	The relationship between the concepts of STZ and tax haven	305
13.1.3.1.	Collection of countries	305
13.1.3.2.	Aruba and Curaçao	306
13.1.3.3.	Brazil	307
13.1.3.4.	Madagascar	307
13.1.3.5.	Nigeria	307
13.1.3.6.	Poland	308
13.1.3.7.	Russia	309
13.1.3.8.	South Africa	309

13.1.3.9.	Spain	310
13.1.3.10.	Turkey	311
13.2.	The goals of STZs	312
13.2.1.	Outline of the section	312
13.2.2.	The economic goals of the STZ regulations	312
13.2.2.1.	Collection of countries	312
13.2.2.2.	Brazil	316
13.2.2.3.	Nigeria	317
13.2.2.4.	Poland	318
13.2.2.5.	Spain	319
13.2.2.6.	South Africa	320
13.2.3.	Preferred businesses and operations	321
13.2.3.1.	Collection of countries	321
13.2.3.2.	Aruba and Curaçao	322
13.2.3.3.	Brazil	322
13.2.3.4.	Canada	323
13.2.3.5.	China	324
13.2.3.5.1.	Overview	324
13.2.3.5.1.1.	SEZs	324
13.2.3.5.1.2.	Service outsourcing demonstration cities	324
13.2.3.5.1.3.	Comprehensive bonded zones	325
13.2.3.5.1.4.	Western regions	326
13.2.3.5.1.5.	Minority autonomous region	326
13.2.3.5.1.6.	Pilot FTZs	326
13.2.3.5.2.	The four pilot FTZs	327
13.2.3.6.	Honduras	328
13.2.3.7.	Madagascar	328
13.2.3.8.	Poland	328
13.2.3.9.	Russia	329
13.2.3.10.	Spain	329
13.2.3.11.	South Africa	330
13.2.3.12.	Turkey	331
13.2.3.13.	United States	332
13.2.3.14.	Uruguay	332
13.2.4.	Political endeavours with STZs	333
13.2.4.1.	Collection of countries	333
13.2.4.2.	Brazil	336
13.2.4.3.	Netherlands	337
13.2.4.4.	Nigeria	339
13.2.4.5.	Spain	339
13.2.5.	Time frame for STZ rules	340

13.2.5.1.	Collection of countries	340
13.2.5.2.	Brazil	344
13.2.5.3.	Madagascar	345
13.2.5.4.	Netherlands	346
13.2.5.5.	Spain	347
13.3.	Taxes involved	348
13.3.1.	Outline of the section	348
13.3.2.	Constitutional and other domestic limitations on tax benefits	349
13.3.2.1.	Collection of countries	349
13.3.2.2.	Aruba and Curaçao	352
13.3.2.2.1.	FZ Aruba	352
13.3.2.2.2.	FZ San Nicolas	354
13.3.2.2.3.	EZ Curaçao	354
13.3.2.3.	Brazil	356
13.3.2.4.	Netherlands	356
13.3.2.5.	Spain	358
13.3.2.6.	United Arab Emirates	359
13.3.2.7.	Uruguay	360
13.3.3.	Tax incentives of the STZ framework	361
13.3.3.1.	Common remarks	361
13.3.3.2.	Aruba and Curaçao	361
13.3.3.2.1.	FZ Aruba	361
13.3.3.2.2.	FZ San Nicholas	362
13.3.3.2.3.	EZ Curaçao	363
13.3.3.3.	Brazil	363
13.3.3.3.1.	EPZs	363
13.3.3.3.2.	MFTZ	364
13.3.3.3.3.	SUDAM and SUDENE	365
13.3.3.3.4.	Desenvolve	367
13.3.3.3.5.	FUNDAP	367
13.3.3.4.	Canada	367
13.3.3.5.	China	369
13.3.3.5.1.	Chinese tax environment	369
13.3.3.5.2.	SEZs	369
13.3.3.5.3.	Service outsourcing demonstration cities	370
13.3.3.5.4.	Comprehensive bonded zones	370
13.3.3.5.5.	Western regions	371
13.3.3.5.6.	Minority autonomous regions	372
13.3.3.5.7.	Pilot FTZs	372
13.3.3.6.	Colombia	373

13.3.3.7.	Honduras	375
13.3.3.8.	Madagascar	375
13.3.3.9.	Netherlands	376
13.3.3.9.1.	Indirect tax perspective	376
13.3.3.9.2.	Direct tax perspective	379
13.3.3.10.	Nigeria	380
13.3.3.11.	Panama	381
13.3.3.12.	Poland	382
13.3.3.13.	Russia	383
13.3.3.14.	South Africa	383
13.3.3.15.	Spain	384
13.3.3.16.	Turkey	386
13.3.3.17.	United Arab Emirates	388
13.3.3.18.	United States	390
13.3.3.19.	Uruguay	390
13.3.4.	PEs, CFCs and STZs	391
13.3.4.1.	Collection of countries	391
13.3.4.2.	Brazil	393
13.3.4.3.	Netherlands	394
13.3.4.4.	Nigeria	395
13.3.5.	Sanctions when taxpayers do not (any longer) fulfil the requirements	396
13.3.5.1.	Collection of countries	396
13.3.5.2.	Aruba and Curaçao	398
13.3.5.3.	Netherlands	400
13.3.5.4.	Nigeria	400
13.3.5.5.	Spain	404
13.3.6.	Ring-fencing in relation to business activities between domestic STZ and non-STZ companies	405
13.3.6.1.	Collection of countries	405
13.3.6.2.	Brazil	408
13.3.6.3.	Spain	409
13.3.7.	Repatriation of capital, profit and capital gains	409
13.3.7.1.	Collection of countries	409
13.3.7.2.	Netherlands	412
13.3.7.3.	Spain	412
13.3.8.	Exemptions and reliefs for import and export	413
13.3.8.1.	Collection of countries	413
13.3.8.2.	Brazil	416
13.3.8.3.	South Africa	417
13.3.9.	Specific tax incentives to seaport and airport activities	418

13.3.9.1.	Collection of countries	418
13.3.9.2.	Poland	420
13.3.9.3.	Russia	420
13.3.9.4.	Spain	421
13.4.	Transparency	422
13.4.1.	Outline of the section	422
13.4.2.	Secrecy on transactions and benefits granted to STZ companies	423
13.4.2.1.	Collection of countries	423
13.4.2.2.	Brazil	425
13.4.2.3.	Netherlands	427
13.4.2.4.	Nigeria	428
13.4.2.5.	Poland	430
13.4.3.	Cooperation and information provided to foreign (domestic) authorities	431
13.4.3.1.	Collection of countries	431
13.4.3.2.	Netherlands	434
13.4.3.3.	Nigeria	435
13.4.3.4.	Poland	436
13.4.4.	Applicability of the tax treaty network and other cooperative agreements	437
13.4.4.1.	Collection of countries	437
13.4.4.2.	Aruba and Curaçao	439
13.4.4.3.	Brazil	440
13.4.4.4.	Madagascar	440
13.4.4.5.	Poland	441
13.4.4.6.	South Africa	442
13.4.4.7.	Turkey	442
13.4.5.	The influence of BEPS standards on transparency and exchange of information	443
13.4.5.1.	Collection of countries	443
13.4.5.2.	China	446
13.4.5.3.	Nigeria	447
13.4.5.4.	Poland	448
13.5.	International implications and limitations	449
13.5.1.	Outline of the section	449
13.5.2.	The role of trade agreements	449
13.5.2.1.	Collection of countries	449
13.5.2.2.	Brazil	452
13.5.2.3.	Madagascar	452

13.5.2.4.	Nigeria	454
13.5.3.	STZs and targets to maintain benefits for foreign beneficial owners	457
13.5.3.1.	Collection of countries	457
13.5.3.2.	Brazil	459
13.5.3.3.	Poland	460
13.5.4.	Participation exemption and PEs	461
13.5.5.	The potential effect of BEPS on granted STZ benefits	464
13.5.5.1.	Collection of countries	464
13.5.5.2.	Brazil	466
13.5.5.3.	Honduras	467
13.5.5.4.	Netherlands	468
13.5.5.5.	Panama	468
13.5.5.6.	Poland	469
13.5.5.7.	Spain	470
13.5.6.	STZs and the effect of the EU rules on State aid	471
13.5.6.1.	Netherlands	471
13.5.6.2.	Poland	471
13.5.6.3.	Spain	473
13.5.7.	STZs and the level of the EU Code of Conduct	473
13.5.7.1.	Netherlands	473
13.5.7.2.	Poland	474
13.5.7.3.	Spain	475
13.6.	Businesses and practices in STZs	475
13.6.1.	Outline of the section	475
13.6.2.	The achieved economic development in the STZs	476
13.6.2.1.	Collection of countries	476
13.6.2.2.	Brazil	478
13.6.2.3.	Madagascar	480
13.6.2.4.	Netherlands	481
13.6.2.4.1.	Indirect tax perspective	481
13.6.2.4.2.	Direct tax perspective	482
13.6.2.5.	Nigeria	483
13.6.2.6.	Poland	484
13.6.2.7.	South Africa	485
13.6.2.8.	United States	486
13.6.3.	Statistics of the success of the STZs	487
13.6.3.1.	Collection of countries	487
13.6.3.2.	Brazil	489
13.6.3.3.	Poland	490

13.6.3.4.	South Africa	490
13.6.3.5.	Spain	492
13.6.3.6.	Turkey	493
13.6.4.	Experience of the STZ administration	494
13.6.4.1.	Collection of countries	494
13.6.4.2.	Brazil	497
13.6.4.3.	Netherlands	499
13.6.4.4.	Poland	499
13.6.4.5.	United States	500
13.6.5.	The relationship between domestic STZ and non-STZ companies	501
13.6.5.1.	Collection of countries	501
13.6.5.2.	Brazil	504
13.6.5.3.	Poland	505
13.6.6.	Opinions on differences between developed and developing country STZs	507
13.6.6.1.	Collection of countries	507
13.6.6.2.	Brazil	509
13.6.6.3.	Madagascar	510
13.6.6.4.	Netherlands	512
13.7.	Conclusions and recommendations	513
13.7.1.	Outline of the section	513
13.7.2.	The existing time frame compared to economic, political and social goals	513
13.7.2.1.	Collection of countries	513
13.7.2.2.	Brazil	516
13.7.2.3.	Netherlands	517
13.7.3.	The future of the STZ	518
13.7.3.1.	Collection of countries	518
13.7.3.2.	Brazil	520
13.7.3.3.	Madagascar	522
13.7.3.4.	Netherlands	523
13.7.3.5.	Nigeria	523
13.7.3.6.	Poland	524
13.7.3.7.	South Africa	525
13.7.3.8.	Spain	526
13.7.4.	Recommendations for the future taxation of STZs	527
13.7.4.1.	Collection of countries	527
13.7.4.2.	Brazil	529
13.7.4.3.	Madagascar	531
13.7.4.4.	Nigeria	532

13.7.4.5.	South Africa	534
13.7.4.6.	Spain	535
13.8.	Summing up the survey	536
13.8.1.	Starting point	536
13.8.2.	Summing up concept	537
13.8.3.	Summing up goals	538
13.8.4.	Summing up taxes	539
13.8.5.	Summing up transparency	540
13.8.6.	Summing up international	542
13.8.7.	Summing up STZ achievements	543
13.8.8.	Summing up future	545
13.9.	Final words	548
Appendix		549
Part IV		
Conclusions and Recommendations		
<b>Chapter 14:</b>	<b>Main Findings on Special Tax Zones</b>	561
	<i>Jan de Goede and Pasquale Pistone</i>	
14.1.	Concluding remarks	561
14.1.1.	Focus of the research	561
14.1.2.	Definition of STZs: Distinction from tax havens and regimes used for base erosion and profit shifting	562
14.1.3.	Scope and development of STZs	562
14.1.4.	Constitutional aspects of STZs	563
14.1.5.	Tax treaty aspects of STZs	564
14.1.6.	International and EU tax policy aspects of STZs	566
14.1.6.1.	Tax policy	566
14.1.6.2.	Harmful tax competition	566
14.1.6.3.	Transparency	566
14.1.7.	Trade agreements and STZs	567
14.1.8.	Economic effectiveness of STZs	567
14.2.	Recommendations	569
14.2.1.	Sovereignty	569
14.2.2.	International compatibility	569

14.2.3.	Effectiveness	570
14.2.4.	Useful application of STZs	570
14.2.5.	Legal certainty in cross-border situations	570
14.2.6.	Qualified STZ regime	570
14.2.7.	Preservation of tax benefits for the investor	571
14.2.8.	Coordination between international organizations	571
14.3.	Final words	571

---

# Chapter 1

## Introduction to Special Tax Zones

Antti Laukkanen\*

### 1.1. Preliminary matters

The concept of “special tax zone” (STZ) applies to areas where tax regulations are more beneficial than in the generally applicable tax system of the surrounding jurisdiction or country of which the zone forms a part.

This book is the result of IBFD’s collaborative tax research on STZs.<sup>1</sup> This chapter describes the project, and formulates some general ideas regarding STZs. The STZ research group involved 12 universities and research institutions across 6 continents, covering 17 countries, as well as the islands of Aruba and Curaçao, belonging to the Kingdom of the Netherlands. The partners were the following:

- International Bureau of Fiscal Documentation (IBFD) (the Netherlands);
- Erasmus University Rotterdam (the Netherlands);
- University of Łódź (Poland);
- University of Vigo (Spain);
- Koç University (Spain);
- Ural State Law University (Russia);
- Fudan University (China);
- University of Michigan Law School (United States);
- University of Cape Town (South Africa);
- University of the Republic (Uruguay);
- Brazilian Institute of Tax Law (IBDT)<sup>2</sup> (Brazil); and
- Colombian Institute of Tax Law (ICDT)<sup>3</sup> (Colombia).

---

\* PhD (Econ.), Hanken School of Economics, Finland; former Postdoctoral Research Fellow, IBFD.

1. The STZ research group was administered by IBFD as follows: Research Group Coordinator: Pasquale Pistone; Head of Project: Jan de Goede; Project Manager: Antti Laukkanen; and Research Assistant (country survey): Carolina Spera.

2. *Instituto Brasileiro de Direito Tributário.*

3. *Instituto Colombiano de Derecho Tributario.*

Most of the partners dealt only with their home countries, whereas Erasmus University Rotterdam,<sup>4</sup> the University of Cape Town<sup>5</sup> and the University of Michigan Law School<sup>6</sup> covered several countries or areas. IBDT involved a large research group, as Brazil separately reported the characteristics of its five different STZs whenever the relevant regulations clearly departed from a universal definition or common rules. In addition to IBDT, Erasmus University Rotterdam also involved several researchers in the country survey. IBFD developed, coordinated and led the project.

The covered countries (and areas) are the following:

- Aruba;
- Brazil;
- Canada;
- China;
- Colombia;
- Curaçao;
- Honduras;
- Madagascar;
- the Netherlands;
- Nigeria;
- Panama;
- Poland;
- Russia;
- South Africa;
- Spain;
- Turkey;
- the United Arab Emirates;
- the United States; and
- Uruguay.

The STZ project involved three international tax seminars, the first in Vigo, the second in Rotterdam and the third in Łódź.<sup>7</sup> The country survey is based on the answers to a questionnaire, completed by the partners by

---

4. Along with the Netherlands, Erasmus University Rotterdam covered Aruba, Curaçao and the United Arab Emirates.

5. Along with South Africa, the University of Cape Town covered Madagascar and Nigeria.

6. Along with the United States, the University of Michigan Law School covered Canada, Honduras and Panama.

7. The first International Tax Seminar on Special Tax Zones took place in the Vigo Free Trade Zone and at the University of Vigo in Spain in April 2016; the second at Erasmus University Rotterdam in the Netherlands in April 2017; and the third at the University of Łódź in Poland in April 2018.

31 March 2016. Country-specific information is generally updated as of 31 March 2016, except that the following countries and areas have updated information until 31 May 2017: Aruba, Brazil, China, Colombia, Curaçao, the Netherlands, Poland, Spain and Turkey. In addition, the information regarding the United Arab Emirates was updated as of 1 January 2018, when the country implemented a general VAT system. The reader should note that the country survey is rich in detailed information, and it is important to realize that, aside from possible misunderstandings or issues of interpretation, tax information constantly changes.

## 1.2. What is a special tax zone?

STZs are a global phenomenon, but they especially belong to the developing world. European countries have established STZs in remote and weakened industrial areas in order to promote the economic development of said areas, but these zones do not seem to have the same economic significance to the relevant economy as a whole as STZs may have in developing countries.<sup>8</sup>

The types of STZs are numerous, and they operate under several names, including economic development zones (EDZs), export processing zones (EPZs), free economic zones (FEZs), free trade zones (FTZs), free zones (FZs), special economic zones (SEZs), special zones (SZs) and tax-free zones (TFZs). These all primarily have the same goal: STZs aim to attract foreign or domestic investments to create employment opportunities and thus improve the economic development of the zone and the surrounding area or country. It is a sovereign right of states to promote their economies for the benefit of their citizens, but a policy framework gradually emerges wherein harmful tax incentives and base erosion and profit shifting need to be combated. This entails a balancing act. Employment is commonly easiest to improve by providing low-skill manufacturing or other industrial work, for example in the textile or electronics industries, but employment does not improve with unmanned mailbox companies in tax havens. The distinction between tax havens and STZs has to be obvious. Despite the main attraction of STZs – reduced or abolished corporate income taxation and VAT – all other tax haven connotations should be tackled, for example by providing for a completely transparent business environment, companies with substantial activity and a solid information flow from STZs to foreign tax authorities.

8. The concept is defined fairly extensively in A. Laukkanen, *The Development Aspects of Special Tax Zones*, 70 Bull. Intl. Taxn. 3 (2016), Journals IBFD; it is developed further from the developing country perspective in A. Laukkanen, *Special Tax Zones in Developing Countries and Global Tax Policy*, 70 Bull. Intl. Taxn. 10 (2016), Journals IBFD.

It is noteworthy that, while STZs were originally created as bonded warehouses for customs and VAT purposes, they have increasingly been used for production and, more recently, for promoting the development of services and innovation. In view of that trend, the project has strongly focused on company taxation (while still addressing the other relevant aspects).

An OECD report on harmful tax competition from 1998 listed the basic characteristics for both tax havens and harmful tax practices.<sup>9</sup> The criteria for defining tax havens and harmful tax practices were practically the same in respect of three criteria, namely (i) no or low taxes; (ii) lack of transparency; and (iii) lack of information, but the definitions deviated in respect of a fourth criterion. The fourth criterion for tax haven was (iv) no substantial activities, whereas the definition of harmful tax practices recognized (iv) ring-fencing. Ring-fencing elementarily belongs to STZs, as STZ provisions are usually applicable to a restricted area only.

Nonetheless, the BEPS Project finds that countries seem to be departing from traditional ring-fencing and moving towards lower corporate tax rates on certain types of income.<sup>10</sup> Such income types may be, for example, income from IP assets or income from STZ enterprises. In accordance with the OECD report, contracting parties should eliminate tax havens from their tax treaties.<sup>11</sup> Such a recommendation for tax havens puts pressure on STZs and makes it relevant to analyse these, as the zones should clearly distinguish themselves from tax havens in order to be considered acceptable from an international tax policy perspective and to be able to apply treaty provisions.

### 1.3. Structure of the book

#### 1.3.1. Topical studies

Part 1, comprising chapter 1, describes the concept and the project.

Part 2, comprising chapters 2-12, consists of topical studies. The main topical studies originally involved (i) the concept of STZs; (ii) constitutional

---

9. OECD, *Harmful Tax Competition: An Emerging Global Issue* pp. 23 and 26 (OECD 1998).

10. OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance: Action 5 – 2015 Final Report* p. 23 (OECD 2015), International Organizations' Documentation IBFD.

11. OECD (1998), *supra* n. 9, at p. 50.

issues; (iii) types of STZs; (iv) tax policy; (v) the international tax perspective; and (vi) the global business perspective. Considering the global expanse of STZs, it was realized that further studies are needed with regard to non-tax agreements. The World Trade Organization (WTO), for example, has its own limitations on subsidies, especially relating to manufacturing entities. Consequently, the topic of STZs and the WTO joined the studies.

The following are the current seven main topics: (i) the concept of STZs (*see* chapter 2); (ii) types of STZs (*see* chapter 3); (iii) STZs and constitutional issues (*see* chapter 4); (iv) tax policy and STZs (*see* chapter 5); (v) STZs and tax treaties (*see* chapter 6); (vi) STZs, the WTO and non-tax treaties (*see* chapter 7); and (vii) effectiveness and efficiency in STZs (in respect of (a) governments (*see* chapter 8); and (b) corporations (*see* chapter 9)).

The Rotterdam seminar extended the project to two minor subjects: (i) STZs for art as an example of specialized STZs (*see* chapter 10); and (ii) VAT and incentives in indirect taxation (*see* chapter 11). The final topical chapter focuses on SEZs and BEPS in South Africa and Kenya (*see* chapter 12).

Topic (v), STZs and tax treaties, could be developed further, as the applicability of tax treaties is one of the core issues in the STZ tax context. Obviously, the possible prohibition and abolition of an STZ regime if such regime is considered harmful, the avoidance of double taxation on cross-border income via the reduction of taxation at source and, with the exemption and credit methods, in the country of residence, as well as non-discrimination and exchange of information, make tax treaty discussions less important, as tax treaties probably do not apply.

The participants also discussed the European Union and its role in the STZ project. The EU Member States are, however, not among the major providers of STZs. Further, the Vigo Seminar did not specifically include international agreements in the keynote speeches, and topic (vi), STZs, the WTO and non-tax treaties, therefore provided virginal research possibilities in this project. One of the main WTO issues concerns characteristics of STZs, as the organization has been restrictive in regard to subsidies for manufacturing entities. Topic (vii) initially concerned global businesses and STZs, but it was later converted to a more focused issue, “effectiveness and efficiency”, as tax measures clearly are in need of research and outcome. Effectiveness and efficiency was further divided into two subparts, governments and corporations, reflecting the macroeconomic and microeconomic perspectives of STZs. The microeconomic part concentrates on STZs in China.

In addition to corporate income tax (CIT), VAT is commonly subject to exemptions in STZs, but as an incentive, VAT is still no more than a tax. Taxation of services may be different if the source country does not exempt exported services from VAT and the customer's country does not relieve the paid foreign VAT. Double VAT taxation occurs if the foreign customer cannot deduct the supplier's VAT. Nonetheless, the main jurisdiction and/or the STZ may apply a reverse charge mechanism<sup>12</sup> to the foreign supply, according to which the customer has to declare the foreign supply attached to the local VAT in its VAT declaration. Sometimes special tax regimes, for example *maquiladoras* in Mexico, have accelerated refunds on imported goods. Such a refund may have a significant cash flow effect if the value (or the proportional value) of the incoming materials is essential.<sup>13</sup>

As the basis of chapter 12, Ame Chimbombi's recent thesis, *The Possibility of Base Erosion and Profit Shifting through Special Economic Zones: A Critique of the South African and Kenyan SEZ Regimes Based on BEPS Action 5*,<sup>14</sup> scrutinizes the connection between SEZs and BEPS in South Africa and Kenya. It is noteworthy that the thesis analyses the concept of "special economic zones", but, as stated above and later in this book, "SEZ" is practically synonymous with "STZ". At the time the project was established in 2015, IBFD selected the term "STZ" in order to highlight tax issues, whereas the term "SEZ" obviously refers to economic matters, commonly with regard to development intentions.

### 1.3.2. Country survey

Part 3, comprising chapter 13, contains the country survey, which develops and summarizes the results of the first phase of IBFD's collaborative tax research on STZs. The survey is organized in accordance with the topics, and each research question is answered for each country. The aim is to provide as standardized a set of information as possible, but, because of the

---

12. See, for example, R.F.W. van Brederode & S. Pfeiffer, *Combating Carousel Fraud: The General Reverse Charge VAT*, 26 Intl. VAT Monitor 5, p. 151 (2015), Journals IBFD: "Under the reverse charge mechanism, the VAT liability is shifted from the supplier to the customer. The customer accounts for the VAT on the purchase in his VAT return as output VAT and deducts the same as input VAT. No actual tax payment would be made to the tax authorities in relation to this supply if the customer has the full right to deduct input VAT."

13. L. Tautfest & S. Lugo, *Mexico - Value Added Tax*, Topical Analyses IBFD (accessed 25 July 2016).

14. Winning thesis of the master's thesis awards of the University of Cape Town and IBFD in 2016.

large variety of STZs, the answers have different lengths. Some zones have many rules and details to report; others probably do not apply a particular rule and have nothing to report. The study aims to cover academically interesting characteristics and tries to avoid technical notes, for example on registration procedures and such. Share capital and employment requirements are still among the main characteristics of STZs.

The questionnaire was divided into seven working packages, comprising 37 questions in total on related tax issues. The seven themes of the working packages are the following: (i) concept; (ii) goals; (iii) taxes; (iv) transparency; (v) international implications and limitations; (vi) tax practice; and (vii) conclusions and recommendations.

The University of Michigan Law School research group's answers to generally applicable questions follow under the heading "Michigan". The Netherlands deserves a fair deal of attention in this chapter, although the EU State aid rules, the BEPS Project and other factors led the country to abolish the special regime in Schiphol airport as of 1 May 2016 and the seaport regulations as of 1 January 2017. Still, the Netherlands has one urban STZ regime, has a developed tax system, considers itself a "good European citizen" in tax matters,<sup>15</sup> favours different kinds of company structures and is therefore one of the more lucrative countries in which to do business in Europe.

The summing-up of the country survey (*see* section 13.8.) refer to each working package and summarize the main issues. The editor provides selected highlights of the country survey's conclusions and recommendations (*see* section 13.7.), as these comments are from the partners and may be of clear, substantive relevance for STZ developers or MNEs who intend to establish their entities in new countries. After some final words (*see* section 13.9.), the country survey incorporates an appendix containing STZ data from Poland.

### 1.3.3. Conclusions and recommendations

Part 4, comprising chapter 14, addresses the three last questions of the questionnaire, which concerned IBFD's role in determining recommendations for STZ businesses, taking into account the results of the project, the sovereign rights of states to promote their economies within the current tax

---

15. *See* sec. 13.4.3.2.

environment and ongoing developments, for example with regard to the OECD BEPS Project. This collaborative STZ project could propose new practices or even provisions with respect to the OECD Model – or more generally – as the future establishers of STZs will have to be aware of the various existing and forthcoming international tax rules in order to deliver tailored STZ regimes to MNEs and other business operators. Probably the most welcome conclusion would be a guideline which defines guaranteed non-harmful business activities, operations with some risks, and guidance with regard to business activities to be avoided in order to sustain the international acceptance of STZ provisions.



## Contact

IBFD Head Office  
Rietlandpark 301  
1019 DW Amsterdam  
P.O. Box 20237  
1000 HE Amsterdam  
The Netherlands

**Tel.:** +31-20-554 0100 (GMT+1)

**Email:** [info@ibfd.org](mailto:info@ibfd.org)

**Web:** [www.ibfd.org](http://www.ibfd.org)



IBFD, Your Portal to Cross-Border Tax Expertise