

CHAPTER 172

THE FISCAL INCENTIVES ACT

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FISCAL INCENTIVES

*(15th December, 1975.)*18/1975.
23/1976.

1. This Act may be cited as the Fiscal Incentives Act. **Short title.**

PART I

PRELIMINARY

2. In this Act unless the context otherwise requires— **Interpretation.**

“approved enterprise” means an enterprise approved by the Minister under section 7 for the purpose of conferring a benefit under this Act;

“approved product” means a product of manufacture approved by Cabinet under section 6 for manufacture by an approved enterprise.

“benefit” means any relief granted to an approved enterprise under this Act;

“Comptroller” means the Comptroller of Customs;

“Common Market” and “Member State” means respectively all and any of those States that are parties to the Treaty establishing the Caribbean Common Market;

“Commissioner” means the person for the time being performing the duties of Commissioner of Inland Revenue and includes any officer duly authorised to act on his behalf;

“date of construction” means the date declared in an Order under section 7;

"date of production" means the date declared in an Order under section 7;

"Enclave Enterprise" means an enterprise producing exclusively for export to countries outside the Common Market;

"enterprise" means any company registered in Antigua and Barbuda under the Companies Act;

"established industry" means an industry which supplies more than 90 per centum of the domestic market for any product;

"factory" means any premises in which, or within the close or curtilage or precincts of which or any place where persons are or will be employed in any process for or incidental to any of the following purposes—

(a) the production of an approved product;

(b) the adapting for sale of any approved product, being premises or any place in which, or within the close or curtilage or precincts of which, the work is or will be carried on by way of trade or for purposes of gain and to or over which the approved enterprise which employs or will employ the persons employed or to be employed, as the case may be, therein has access or control;

"Group I Enterprise" means an enterprise in respect of which the local value added is at least 50 per centum of the amount realised from the sales of an approved product;

"Group II Enterprise" means an enterprise in respect of which the local value added is at least 25 per centum but less than 50 per centum of the amount realised from the sales of an approved product;

"Group III Enterprise" means an enterprise in respect of which the local value added is at least 10 per

centum but less than 25 per centum of the amount realised from the sales of an approved product;

"industry" means a manufacturing or processing industry and includes deep sea fishing and shrimping where they form part of an integrated processing operation, but does not include agriculture or tourism;

"local value added" means the amount (expressed as a percentage of the total sales of an approved product) by which the amount realised from the sales of an approved product over a continuous period of 12 months, exceeds the aggregate amount of the following—

(a) the value of imported raw materials, components and parts of components, fuels and services;

(b) wages and salaries paid during the period to persons who are not nationals of the Member States;

(c) profits distributed and remitted directly or indirectly to persons who are not resident in a Member State;

(d) interest, management charges and other income payments or any of them accruing directly or indirectly to persons not resident in a Member State other than a branch or agency of banks not resident in a Member State;

(e) depreciation of imports of plant, machinery and equipment;

"national" means person who is a citizen of a Member State and includes a person whose connection with such a State entitles him to be regarded as belonging to, or being a native or resident of the State for the purpose of the Constitution of that State or the law relating to immigration for the time being in force, as the case may be;

"sale" means the proceeds of sale ex-factory of an approved product;

Computation of
local value
added.

3. (1) The local value added shall be weighted by the wages or salaries paid to nationals of a Member State expressed as a percentage of the total sales of the approved product and calculated in accordance with the formula

$$\frac{V (100 + W)}{100}$$

(2) For the purposes of subsection (1)—

(a) "V" represents the local value added expressed as a percentage of the total sales of the approved product; and

(b) "W" represents the wages and salaries paid to nationals of a Member State and expressed as a percentage of the total sales of the approved product.

Determination of
value of content.

4. In determining the value of the content of a component produced by a Member State for the purposes of paragraph (a) of the definition of local value added, no account shall be taken of any element in the cost of that component, except the value of the imported raw material content.

Non-resident.

5. (1) For the purposes of paragraphs (c) and (d) of the definition of local value added, an enterprise shall be deemed not to be resident in a Member State if it is controlled directly or indirectly by a person who is not resident in a Member State (hereinafter referred to as a non-resident).

(2) A non-resident shall be deemed to have control of an enterprise if he owns or is entitled to purchase the greater part of the ordinary paid-up share capital (not including shares which carry no voting rights) of the enterprise.

Declaration of
approved
product.

6. (1) Subject to section 9, Cabinet may, by Order, declare that a product of manufacture shall be an approved product for the purposes of this Act if they are satisfied that the manufacture of the product would—

(a) be of benefit to Antigua and Barbuda, both economic and non-economic considerations being taken into account; and

(b) have a beneficial effect on employment in numbers and gross wages.

(2) An Order may be made under subsection (1) in respect of a product which is being manufactured in Antigua and Barbuda at the date of the Order.

(3) Cabinet, before declaring under subsection (1) that a product of manufacture shall be an approved product for the purposes of this Act, shall also have regard to the following considerations—

(a) the effect which approval would have on existing industries;

(b) whether manufacture of the product would utilize raw materials or skills available in Antigua and Barbuda;

(c) whether the existing capacity for manufacture of the product is sufficient to meet the demand for the product; and

(d) the element of risk involved in establishing a successful manufacture of the product.

7. (1) Subject to section 9, the Minister on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in Antigua and Barbuda to manufacture an approved product, or in the case of an enterprise that, at the commencement of this Act is manufacturing the product declared to be an approved product by Order under section 6 may, by Order, declare the enterprise to be an approved enterprise if he is satisfied that the enterprise—

**Declaration of
approved
enterprise.**

(a) is or will be adequately financed;

(b) has adequate trained personnel in its employ or is able to obtain the services of such personnel;

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(*c*) has access to the necessary technical information;

(*d*) is able to obtain adequate raw materials; and

(*e*) possesses, or will possess, the necessary factory.

(2) In every Order made under subsection (1) a date shall be declared to be the date on which, for the purpose of this Act—

(*a*) construction is deemed to begin; and

(*b*) production is deemed to begin.

(3) Every Order made under subsection (1)—

(*a*) shall specify the factory in respect of which the benefits under this Act may be enjoyed;

(*b*) may declare that in its application it shall be restricted to a part of a factory or to a particular grade, quality, description, type or classification of product; and

(*c*) may provide for its revocation in any case of breach of or non-compliance with its requirements.

Applications for approval.

8. An application under section 7 shall specify—

(*a*) the locality or proposed locality of the factory in which the enterprise is manufacturing or intends to manufacture the approved product;

(*b*) the date of construction of the factory, which shall not be later than 12 months after the date of the application, except that where a factory is already in existence, the application shall contain all information that may enable the Minister to specify the date of construction;

(*c*) the date on which production is likely to begin which shall not be later than 18 months from the date of construction, except that where the production of an approved product has already commenced, the application shall contain all information that may enable the Minister to specify the date on which production is deemed to begin;

(d) the approved product already being manufactured or intended to be manufactured; and

(e) all information, supported by documentary evidence, relevant to the determination of the local value added.

9. (1) Before an Order is made either under section 6 or 7 the Minister shall cause the fact that Cabinet or he, as the case may be, is about to be asked to consider whether for the purposes of this Act a product for manufacture should be an approved product, or an enterprise an approved enterprise to be advertised in Antigua and Barbuda and if the Minister thinks it necessary elsewhere.

Objections to proposals to approve a product or enterprise.

(2) The advertisement referred to in subsection (1) shall contain such particulars as to the product or enterprise of which such approval is being sought as the Minister considers necessary and invite objections if any thereto.

(3) The advertisement shall state the period within which the objection to the approval of the product or the enterprise shall be made.

(4) Every objection received by the Minister within the time stipulated in the advertisement or within such extended time as the Minister may allow shall be considered by Cabinet or the Minister, as the case may be, before an Order is made under section 6 or 7, as the case may be.

10. Cabinet or the Minister, as the case may be, shall have an absolute discretion to grant or refuse approval in respect of a product as an approved product or enterprise as an approved enterprise.

Cabinet and Minister to have absolute discretion in respect of approval.

11. (1) Subject to section 21(4) an approved enterprise may be granted benefits under this Act for a period not exceeding the period applicable thereto specified in the Schedule (and hereinafter referred to as the period of the tax holiday) if it is classified into one of the following categories—

Classification of Enterprises.

(a) Group I Enterprise;

(b) Group II Enterprise;

(c) Group III Enterprise; or

(d) Enclave Enterprise.

(2) Prior to the classification of an approved enterprise as a Group I, Group II or Group III Enterprise, the local value added as computed in accordance with section 3 shall be estimated.

Benefits for enterprise engaged in highly capital intensive industry. Schedule.

12. (1) Where an approved enterprise is engaged in a highly capital intensive industry, the Minister may, by Order, grant it any benefit under this Act for a period not exceeding that for which a benefit may be granted to an Enclave Enterprise in accordance with the Schedule.

(2) For the purpose of this section and section 27 "highly capital intensive industry" means an industry, the capital investment in which is not less than twenty-five million dollars.

PART II

PROVISIONS RELATING TO INCOME TAX

Exemption from income tax. Cap. 212.

13. Notwithstanding the provisions of the Income Tax Act, but subject to section 17 thereof, an approved enterprise shall be entitled to relief from the payment of income tax on the profits arising from the sale of an approved product from the date of production in respect of profits and gains accruing to it for the period of the tax holiday.

Depreciation allowance.

14. In computing the profits of an approved enterprise for the purpose of relief from income tax under section 13, allowance shall be made for any depreciation in value which would, but for the exemption, be claimable in that year.

Deduction for capital expenditure.

15. (1) During the tax holiday period the assets of an approved enterprise shall be depreciated by such amounts as are normally allowed under the Income Tax Act, for wear and tear.

(2) An allowance may be made not exceeding twenty per centum of the capital expenditure incurred by the enterprise on plant, machinery and equipment after the expiration of the tax holiday period.

16. Any loss incurred by an approved enterprise during the period of the tax holiday, may be set-off in accordance with section 17. **Set-off.**

17. (1) Notwithstanding section 15 of the Income Tax Act, and section 8 of the Aid to Pioneer Industries Act, on the expiration of the period of the tax holiday, the net losses incurred during that period may be carried forward for the purpose of set-off in computing the profits of an approved enterprise for the 5-year period following the period of the tax holiday. **Losses carried forward for purpose of set-off. Cap. 212. Cap. 14.**

(2) Where the Order declaring an enterprise to be an approved enterprise is revoked under section 25 such an enterprise shall, for the purposes of carrying forward net losses incurred prior to the revocation of the Order, be deemed to be an approved enterprise.

(3) For the purposes of this section "net losses" means the excess of all losses over all profits made during the period of the tax holiday.

18. (1) Relief from income tax on the export profits of an enterprise accruing from export of the approved product manufactured by it may be granted in accordance with this section only. **Export allowance may be granted.**

(2) Relief shall not be granted under this section—

(a) during the period the enterprise enjoys relief granted under sections 7 and 13;

(b) to an enterprise engaged in a traditionally export-oriented industry in respect of a product of that industry traditionally exported;

(c) in respect of export to a Member State:

Provided that—

- (i) relief may be granted for a period not exceeding five years next after the expiration of the tax holiday period in case of exports to Guyana, Jamaica and Trinidad and Tobago;
- (ii) relief may be granted during the period of five years from the 4th day of July, 1973 in respect of exports to Guyana, Jamaica and Trinidad and Tobago by an enterprise to which no relief has been granted under section 7 or 13.

(3) Relief shall be granted by way of tax credits only.

(4) Relief shall be granted if the export-profits amount to ten per centum or more of the entire profit of the enterprise accruing from the approved product and in accordance with the formula laid down in the Table below.

(5) Relief granted shall not exceed the percentage (being percentage of the whole of the tax liability on the entire export-profits) specified in the Table below opposite the percentage of export-profits from the sale of the approved product:

TABLE

<i>Amount of export-profits expressed as a percentage of the entire profits from the sale of approved product.</i>	<i>Maximum percentage of tax relief.</i>
10% or more but less than 21%	25%
21% or more but less than 41%	35%
41% or more but less than 61%	45%
61% or more	50%

(6) The following formula shall be used to ascertain export-profits for the purpose of this section—

$$\frac{E \times P}{S}$$

where: "E"

represents the proceeds from export sales of the approved product;

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- and "P" represents the profits made by the enterprise from all sales of the approved product for the year;
- and "S" represents the proceeds of all sales for the year.

19. (1) Subject to subsection (2), dividends and other distributions from profits accruing to an approved enterprise as a result of the manufacture of an approved product during the period of the tax holiday shall when paid to shareholders or their nominees be exempt from the payment of income tax. Dividends.

(2) Where a shareholder is not resident in a Member State the exemption referred to in subsection (1) shall apply to so much of the tax as exceeds the tax liability of the shareholder in his country of residence.

20. Interest in whatever form on loan capital and any other monies borrowed by an approved enterprise, whether in the form of overdraft, debenture or otherwise, when paid to the recipient, shall not be exempt from the payment of income tax. Interest.

PART III

PROVISIONS RELATING TO CUSTOMS DUTY

21. (1) If the Minister is satisfied that any plant, equipment, machinery, spare parts, raw materials or components thereof are not available in the Common Market at prices and qualities and in adequate quantities for export comparable to those available from an area outside the Common Market, he may issue a licence to an approved enterprise to import such articles or any of them from an area outside the Common Market. Licence to import.

(2) On receipt of a licence issued under subsection (1) an approved enterprise may import plant, equipment, machinery, spare parts, raw materials or components thereof free from customs duty from an area outside the Common Market for the appropriate period of relief referred to in section 13 or subsection (3) or (4) of section 27, if the Comptroller is satisfied that the plant, equipment, machinery, spare parts, raw materials or components thereof are required—

(a) for constructing, altering, reconstructing or extending the approved enterprise; or

(b) for use by the enterprise in the manufacture of an approved product.

(3) Where subsequent to the issue of a licence under subsection (1), there is a change in the circumstances contemplated by that subsection, the Minister shall—

(a) revoke the licence; or

(b) alter the licence so as to exclude any of the articles in respect of which the change exists.

(4) Notwithstanding subsections (1), (2) and (3) and section 11, an Enclave Enterprise may, until such time as it ceases to be an Enclave Enterprise, import any article mentioned therein without obtaining a licence under subsection (1) thereof.

Record and inspection of articles.

22. (1) An approved enterprise which—

(a) imports into Antigua and Barbuda from a country outside the Common Market; or

(b) purchases within the Common Market, any articles in respect of which it has been granted relief from customs duty under section 21 (2) shall—

(i) keep a record of the articles so imported or purchased in such form and containing such particulars as the Comptroller may require;

(ii) cause the articles to be marked in such manner as the Comptroller may require; and

(iii) permit the Comptroller or a person authorised by him for the purpose, at reasonable times, to inspect such record and to have access to any factory or warehouse under its control for the purpose of examining any such article which the Comptroller has reason to believe to be therein and of the accuracy of the particulars contained in the record.

(2) An approved enterprise which contravenes any of the provisions of this section shall be guilty of an offence and liable, on summary conviction to a fine of three thousand dollars.

23. (1) An article purchased by an approved enterprise under section 21 (2) shall not be sold, or otherwise disposed of by the enterprise except—

Restriction on disposal of articles.

(a) to the transferee, in the case of a transfer of ownership of a factory belonging to the enterprise;

(b) where the approved enterprise pays or gives security to the satisfaction of the Comptroller for the payment of an amount equivalent to the amount of customs duty which but for section 21 (2) would have been payable on importation of such article, where the article was so imported by the enterprise; or

(c) after the expiration of five years from the date of purchase of the article.

(2) An approved enterprise which contravenes any of the provisions of this section is guilty of an offence and liable, on summary conviction, to a fine of three thousand dollars.

PART IV

MISCELLANEOUS

24. (1) Where an approved enterprise fails or neglects—

Delay of construction or manufacture.

(a) to commence construction of a factory on or before the date of construction; or

(b) to commence manufacture at the factory of an approved product in marketable quantities, on or before the date of production,

the Minister may issue a notice in writing requiring it within 30 days of the date of such notice either—

(i) to commence construction of a factory or the manufacture of the approved product in marketable quantities, as the case may be; or

(ii) to prove to the satisfaction of the Minister that the failure or neglect is attributable to a cause

beyond its control and that there is a reasonable prospect of its commencing construction or manufacture, as the case may be, within such time as the Minister considers reasonable.

(2) Where an approved enterprise satisfies the requirements of subparagraph (ii) of subsection (1), the Minister shall by Order, substitute for the date of construction or the date of production as the case may be, some other specified day and thereupon the provisions of this Act shall take effect as if the day specified in such Order was the date of construction or the date of production as the case may be, specified in the order made under section 7.

Revocation of Order.

25. (1) The Minister may, having regard to all the circumstances of the case, if he thinks it expedient so to do, by Order revoke an Order made under section 7, where an approved enterprise—

(a) contravenes any of the provisions of this Act or any regulations made hereunder; or

(b) fails to comply with the requirements of a notice issued under section 24.

(2) Subject to section 17 (2) upon the revocation of an Order made under section 7, the provisions of sections 12 and 20 shall be deemed never to have applied to the enterprise, and such enterprise shall notwithstanding anything contained in the Income Tax Act or the Customs Duties Act, pay to the Commissioner and the Comptroller any sums which but for sections 13 and 21 (2) would have been payable as income tax and customs duty.

(3) Notwithstanding subsection (2), the Minister may, if he thinks that the payment of any such sums would cause undue hardship, or if for any other reason he deems it expedient to do so, remit the whole or part of any such sums payable by the enterprise.

(4) All sums payable under this section may be recovered in the same manner as if they were sums due under the Income Tax Act or the Customs Duties Act, as the case may be.

26. (1) Subject to subsection (3), no factory belonging to an enterprise which is being used or is intended to be used for the manufacture of an approved product shall during the period of the tax holiday, without the prior approval of the Minister, be used for purposes other than the manufacture of the approved product. **Restriction on use of factory.**

(2) An enterprise which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine of three thousand dollars and in the case of a continuing offence to a further fine of seven hundred and fifty dollars in respect of each day or part thereof during which the offence continues after conviction thereof.

(3) This section shall not apply to an enterprise which ceases to be an approved enterprise and in respect of which all sums payable to the Commissioner and the Comptroller in respect of income tax and customs duty have been paid.

27. (1) The Minister shall—

(a) at the expiration of 3 years from the date of production, and

(b) thereafter at intervals of 2 years until the cessation of all benefits under this Act,

appraise the performance of an approved enterprise other than an Enclave Enterprise for the purpose of determining whether any change in its classification is necessary.

(2) Where on an appraisal under subsection (1) an approved enterprise—

(a) fails to maintain its classification and cannot be re-classified into any of the other Groups specified in the Schedule, that enterprise shall with effect from the date of the notice of the decision of the Minister under subsection (5) be no longer treated as an approved enterprise for the purposes of sections 13 and 21 (2);

(b) maintains its classification or is re-classified into any of the other Groups specified in the Schedule, that enterprise shall continue as an approved enterprise and paragraph (b) of subsection (1), shall continue to apply.

Appraisal of performance of enterprise.

Schedule

Schedule.

(3) Where as a result of the re-classification of an approved enterprise into a lower Group, the period of the tax holiday exceeds the maximum period permitted in that group, the Minister shall by Order, reduce the period so as not to exceed the maximum period permitted in the lower Group to which the approved enterprise has been re-classified.

(4) Where an approved enterprise is re-classified into a higher Group, the Minister may by order increase the period of the tax holiday so as not to exceed the maximum period permitted in the Group to which the approved enterprise has been re-classified.

(5) The Minister shall as soon as practicable after an appraisal under subsection (1) serve notice of his decision on the approved enterprise.

(6) This section shall not apply to a highly capital intensive industry.

Transfer of status of approved enterprise.

28. (1) The Minister may, by notice published in the Gazette, transfer the status of an approved enterprise to another enterprise where—

(a) an approved enterprise merges with or is taken over by another enterprise, or forms part of an enterprise's reconstruction; or

(b) in his opinion, it is equitable or in the public interest to do so.

(2) Prior to the issue of a notice under subsection (1) the Minister may require the enterprise to which the status of an approved enterprise is to be transferred to comply with such conditions and to give such undertakings and assurances and in such form as he may consider desirable having regard to the public interest.

(3) On the issue of a notice under subsection (1) all rights, privileges, benefits, immunities, duties and obligations conferred or imposed by or under this Act on the former enterprise may be transferred to the latter enterprise.

Regulations.

29. The Minister may make such regulations as he thinks necessary for giving effect to the provisions of this Act.

30. All Orders made by Cabinet or the Minister under this Act shall be published in the *Gazette*. **Publication in Gazette.**

31. (1) The Minister may not, after the commencement of this Act, declare an industry to be a Pioneer Industry or a person to be a Pioneer Manufacturer for the purposes of the Aid to Pioneer Industries Act. **Savings. Cap. 14.**

(2) Where prior to the commencement of this Act an application for Pioneer status was made under the Aid to Pioneer Industries Act, and the application is at the commencement of this Act pending, the application shall be treated as if it were an application for a declaration of an approved product or an approved enterprise, as the case may be, and were made under this Act, and the provisions of this Act shall apply accordingly.

SCHEDULE

(Section 11)

PERIOD OF TAX HOLIDAY

<i>Classification of Approved Enterprise</i>	<i>Period of tax holiday</i>
GROUPS	YEARS
Group I Enterprise	15
Group II Enterprise	12
Group III Enterprise	10
Enclave Enterprise	15
