



## **CHAPTER 15.16**

# **FISCAL INCENTIVES ACT**

### **Revised Edition**

Showing the law as at 31 December 2008

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This edition contains a consolidation of the following laws—

### **FISCAL INCENTIVES ACT**

Act 15 of 1974 in force 23 April 1974



## CHAPTER 15.16

### FISCAL INCENTIVES ACT

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## CHAPTER 15.16

### FISCAL INCENTIVES ACT

(Act 15 of 1974)

AN ACT to give effect to the agreement on harmonisation of fiscal incentives to industry.

Commencement [23 April 1974]

#### 1. SHORT TITLE

This Act may be cited as the Fiscal Incentives Act.

#### 2. INTERPRETATION

In this Act—

“**approved enterprise**” means an enterprise declared by order of the Cabinet under section 6 for the purpose of conferring a benefit under this Act;

“**approved product**” means a product declared by order of the Cabinet under section 5 for manufacture by an approved enterprise;

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

“**Common Market**” means until 1 May 1974, all States referred to in Schedule 1 and thereafter such of those States that are parties to the Treaty establishing the Caribbean Common Market;

“**construction day**” means the day specified in an order made under section 6(1);

“**enclave enterprise**” means an enterprise producing exclusively for export to countries outside the Common Market;

“**enterprise**” means a company incorporated under the laws of Saint Lucia and engaged or about to engage in an industry;

“**Group I Enterprise**” means an enterprise in respect of which the local value added is at least 50% 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% but less than 50% 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% but less than 25% 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 and 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, content of components and parts thereof, fuels and services;
- (b) wages, salaries or both paid during the 12 month period to persons who are not nationals of a Member State;
- (c) profits distributed or remitted directly or indirectly to persons (including companies) 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 (including companies) who are not resident in a Member State, other than a branch or agency of a bank not resident in a Member State;
- (e) depreciation in the imports of plant, machinery and equipment, or any of them;

“**Member State**” means a State listed in Schedule 1;

“**Minister**” means the member of the Cabinet to whom responsibility for industry is assigned;

“**national**” means a person who is a citizen of a Member State and includes a person whose connection with such a state entitles him or her to be regarded as belonging to, or being a native or resident of the State for the purposes of the laws relating to immigration in force;

“**production day**” means the day on which an approved enterprise commences production of an approved product;

“**sale**” means the proceeds of sale ex-factory of an approved product exclusive of the cost of distribution.

### **3. COMPUTATION OF LOCAL VALUE ADDED**

- (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 undermentioned formula—

$$V (100 + W)$$

$$100.$$

- (2) For the purposes of subsection (1), ‘V’ represents the local value added expressed as a percentage of the total sales of the approved product, and ‘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.

### **4. VALUE OF IMPORTED RAW MATERIAL TO DETERMINE VALUE OF COMPONENT**

- (1) In determining the value of the content of a component produced by a Member State for the purposes of section 2(a), no account shall be taken of any element in the cost of that component, except the value of the imported raw material content.
- (2) For the purposes of section 2(c) and 2(d), a company is considered not to be resident in a Member State if it is controlled directly or indirectly by a person (including a company) who is not resident in a Member State (hereinafter referred to as a “non-resident”).
- (3) A non-resident is considered to have control of a company if he or she owns or is entitled to purchase the greater part of the

ordinary and paid up share capital (not including shares which carry no voting rights) of the company.

## **5. APPROVED PRODUCT**

The Cabinet may by order published in the Gazette declare a product for manufacture by an approved enterprise to be an approved product.

## **6. ORDER DECLARING APPROVED ENTERPRISE**

- (1) Cabinet on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in Saint Lucia to manufacture an approved product, or, in the case of an enterprise that, at the commencement of this Act is manufacturing a product declared to be an approved product by order under section 5, may if it is satisfied that it is in the public interest so to do by order published in the Gazette declare such enterprise to be an approved enterprise with effect from the date specified in the order.
- (2) In determining whether an order should be made under subsection (1), Cabinet shall take into account—
  - (a) the number of enterprises already manufacturing or about to manufacture an approved product;
  - (b) the output or anticipated output of the enterprise.
- (3) An order made under subsection (1)—
  - (a) shall specify the construction day, production day or both such days;
  - (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;
  - (c) may impose continuing obligations on the approved enterprise;
  - (d) may confer certain benefits on the approved enterprise;
  - (e) may provide for its revocation in any case of breach of or non-compliance with its requirements.
- (4) An application under subsection (1) shall be submitted in writing through the Minister and 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 construction day which shall not be later than 12 months after the date of the granting of the application, except that where a factory is already in existence, the application shall contain all information that may enable Cabinet to specify a construction day;
- (c) the production day which shall not be later than 18 months from the construction day, except that where the production of an approved product has already commenced, the application shall contain all information that may enable Cabinet to specify a production day;
- (d) the approved product already being manufactured or intended to be manufactured;
- (e) all information supported by documentary evidence, relevant to the determination of the local value added.

## **7. LICENCE TO IMPORT**

- (1) The Minister if he or she is satisfied that any plant, equipment, machinery, spare parts, raw materials or components thereof are not available from Member States at comparable prices and qualities and in adequate quantities for export, may issue a licence to an approved enterprise to import such article or any of them from an area outside the Common Market.
- (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 period of relief specified in section 12 or in section 19(3) or 19(4), if the Comptroller of Customs and Excise is satisfied that the plant, equipment, machinery, spare parts, raw materials or components thereof are or were required—
  - (a) for constructing, altering, reconstructing or extending the approved enterprise; or
  - (b) for equipping such an enterprise for the purpose of manufacturing 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) The provisions of this section shall not apply to an enclave enterprise.

## **8. RECORD AND INSPECTION OF ARTICLES**

- (1) An approved enterprise which—
  - (a) imports into Saint Lucia from an area outside the Common Market; or
  - (b) purchases within the Common Market, any article in respect of which it has been granted exemption from customs duty by virtue of section 7(2)shall—
  - (i) keep a record of the articles so imported or purchased in such form and containing such particulars as may be required by the Comptroller of Customs and Excise,
  - (ii) cause the article to be marked with such mark and in such manner as may be required by the Comptroller of Customs and Excise, and
  - (iii) permit the Comptroller of Customs and Excise or any person authorised by him or her, at all 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 of Customs and Excise has reason to believe to be therein and of satisfying himself or herself of the accuracy of the particulars contained in the record.
- (2) An approved enterprise which contravenes any of the provisions of this section commits an offence and is liable on summary conviction to a fine of \$3,000.

**9. RESTRICTION ON SALE OR OTHER DISPOSAL OF ARTICLES**

- (1) An article purchased by an approved enterprise free of customs duty under the provisions of section 7(2) shall not be sold, given or otherwise disposed of by such enterprise except—
  - (a) to the transferee, in case of a transfer of the ownership of a factory belonging to the enterprise; or
  - (b) where the approved enterprise pays or gives security to the satisfaction of the Comptroller of Customs and Excise for the payment of an amount equivalent to the amount of customs duty which, but for the provisions of section 7(2) would have been payable on importation of such article into Saint Lucia, where the article was so imported by the enterprise;
  - (c) after the expiration of 5 years from the date of the purchase of the article.
- (2) An approved enterprise which contravenes any of the provisions of this section commits an offence and is liable on summary conviction to a penalty of 3 times the value of the article, the disposal of which contravenes such provisions.

**10. BENEFITS MAY BE GRANTED TO CERTAIN ENTERPRISES**

- (1) An approved enterprise may be granted a benefit under this Act if it is classified under one of the following categories—
  - (a) Group I Enterprise  
Group II Enterprise  
Group III Enterprise;
  - (b) 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.

**11. BENEFITS FOR ENTERPRISE ENGAGED IN HIGHLY CAPITAL INTENSIVE INDUSTRY**

- (1) Where an approved enterprise is engaged in a highly capital intensive industry, Cabinet may by order published in the Gazette grant it any benefit for a period not exceeding that for

which a benefit may be granted to an enclave enterprise in accordance with Schedule 3.

- (2) In this section “highly capital intensive industry” means an industry the capital investment in which is not less than EC\$25,000,000.

## **12. EXEMPTION FROM INCOME TAX**

- (1) Cabinet may in its absolute discretion, grant to an approved enterprise complete or partial exemption from income tax from the production day for a period not exceeding the period specified in Schedule 3 (hereinafter referred to as “the tax holiday period”).
- (2) Where the expiration of the tax holiday period does not coincide with the end of the accounting period of an approved enterprise, the income for the accounting period during which the last day of the tax holiday period falls shall be apportioned between the parts of the accounting periods which respectively precede and follow the end of tax holiday period; the income thus apportioned to the part of the accounting period which precedes the end of the tax holiday period shall be exempt from income tax.

## **13. COMPUTATION**

In computing the profits of an approved enterprise for the purpose of exemption from income tax under section 12(1), allowance shall be made for any depreciation in value resulting from any wear and tear which would, but for the exemption, be claimable in that year.

## **14. DEDUCTION FOR CAPITAL EXPENDITURE**

- (1) The provisions of the Income Tax Act shall apply to an approved enterprise, from the first year of income following the year of income during which the tax holiday period ends, except that a deduction as an initial allowance for capital expenditure shall only be in respect of expenditure incurred after the expiration of the period of exemption from income tax.

- (2) Any loss incurred by an approved enterprise during the tax holiday period may be set-off in accordance with the provisions of section 15(1).

**15. LOSSES MAY BE CARRIED FORWARDED FOR THE PURPOSE OF SET-OFF**

- (1) Despite the provisions of section 7 of the Income Tax Act on the expiration of the tax holiday period, 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 years period following the tax holiday period.
- (2) Where the order declaring an enterprise an approved enterprise is revoked by virtue of section 16(3), 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 tax holiday period.

**16. EXPORT ALLOWANCE MAY BE GRANTED**

- (1) Where a company has made export sales to a territory other than a territory listed in Schedule 2 in computing the tax chargeable for any year of income of such company there shall be set-off for the purposes of collection against the tax chargeable on the chargeable income of such company an export allowance calculated in the manner specified in Part 2 of Schedule 2 if the company in a claim made for the purpose satisfies the Comptroller of Inland Revenue that the provisions of this section and of Schedule 2 are applicable to it.
- (2) All exports of products of an industry and any other product specified by order of the Cabinet published in the Gazette, shall be eligible for export allowance, however, where the exports are to Guyana, Jamaica, or Trinidad and Tobago such allowance shall be granted for a period not exceeding 5 years next following the expiration of any relief granted under section 7 or 12 or both.
- (3) During the period of 5 years after the commencement of this Act, a company may claim relief under this section in respect of

exports to Guyana, Jamaica or Trinidad and Tobago if it does not enjoy relief under section 7 or 12 or both.

- (4) An export allowance under subsection (2) shall be made to the company manufacturing or producing the product of an industry and in no case shall an allowance be made more than once in respect of any one product.

## **17. POWER OF CABINET IN THE EVENT OF DELAY IN COMMENCEMENT OF CONSTRUCTION OR MANUFACTURE**

- (1) Where an approved enterprise fails or neglects—
  - (a) to commence construction of a factory on the construction day; or
  - (b) to commence manufacture at the factory of an approved product in marketable quantities, on or before the production day,

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

- (i) to commence construction of the factory or the manufacture of the approved product in marketable quantities as the case may be, or
  - (ii) to prove to the satisfaction of Cabinet that the failure or neglect is attributable to a cause beyond its control and that there is reasonable prospect of its commencing construction of the factory or manufacturing the approved product in marketable quantities as the case may be, within such time as Cabinet considers reasonable.
- (2) Where an approved enterprise satisfies the requirements of subparagraph (ii) Cabinet shall, by order published in the Gazette, substitute for the construction day or production day 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 construction day or the production day as the case may be, specified in the order made under section 6.
- (3) Cabinet may, having regard to all the circumstances of the case, if it thinks it expedient so to do, by order published in the Gazette revoke an order made under section 6, where an approved enterprise—

- (a) contravenes any of the provisions of this Act or the regulations made thereunder; or
  - (b) fails to comply with the requirements of a notice issued under section 17(1)(b).
- (4) Subject to the provisions of section 15(2), upon revocation of an order made under section 6, the provisions of sections 7 and 12 are considered never to have applied to the enterprise and such enterprise shall, despite anything contained in the Customs (Control and Management) Act or the Income Tax Act pay to the Comptroller of Customs and Excise and the Comptroller of Inland Revenue any sums which but for the provisions of section 7(2), and of section 12 would have been payable as customs duty or income tax.
- (5) Despite the provisions of subsection (4) Cabinet, if it thinks that the payment of any such sums would cause undue hardship, or if for any other reason it deems it expedient so to do, may remit the whole or part of any such sum to the enterprise.
- (6) All sums payable under this section may be recovered summarily as a civil debt.

## **18. RESTRICTION ON USE OF FACTORY**

- (1) Subject to the provisions of 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, within 10 years of the date of the publication of the order declaring it an approved enterprise, without the prior approval of the Cabinet, be used for purposes other than the manufacture of an approved product.
- (2) An enterprise which contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$500 and in the case of a continuing offence to a further fine not exceeding \$250 in respect of each day during which the offence continues after conviction thereof.
- (3) The provisions of 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 Comptroller of Customs and Excise and the Comptroller of Inland Revenue under the provisions of section 7(2) and of section 12 have been paid.

**19. PERFORMANCE OF ENTERPRISE TO BE APPRAISED**

- (1) The Minister shall—
  - (a) at the expiration of 3 years from the production day; and
  - (b) thereafter at intervals of 2 years until the cessation of all benefits under this Act,appraise the performance of an approved 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 or cannot be re-classified to any of the other Groups listed in Schedule 3, 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 section 7(2) and of section 12;
  - (b) maintains its classification or is re-classified to any of the other Groups listed in Schedule 3, that enterprise shall continue as an approved enterprise and the provisions of subsection (1)(b) shall continue to apply.
- (3) Where as the result of the re-classification of an approved enterprise to a lower Group, the tax holiday period exceeds the maximum period allowable in that lower Group, Cabinet shall, by order published in the Gazette reduce the period to coincide with the maximum period allowable in the lower Group to which the approved enterprise has been re-classified.
- (4) Where an approved enterprise is re-classified to a higher Group, Cabinet may, by order published in the Gazette, increase the tax holiday period to coincide with the maximum period allowable in the Group in which the approved enterprise has been re-classified.
- (5) The Minister shall within a reasonable time after an appraisal under subsection (1), serve notice of his or her decision on the approved enterprise.
- (6) The provisions of this section shall not apply to highly capital intensive industry.



**20. DIVIDENDS**

- (1) Dividends or other distributions from profits or gains accruing to an approved enterprise as a result of the manufacture of an approved product during the tax holiday period (hereinafter referred to as “the dividends”), shall not be subject to any limitation as to the time within which the dividends are payable.
- (2) Subject to subsection (3) the dividends when paid to shareholders or their nominees (including a company) shall be exempt from the payment of income tax.
- (3) Where a shareholder is not resident in a Member State, the exemption referred to in subsection (2) shall apply to so much of the tax as exceeds the tax liability of the shareholder in his or her country of residence.

**21. INTEREST NOT TO BE EXEMPTED FROM INCOME TAX**

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.

**22. TRANSFER OF STATUS OF APPROVED ENTERPRISE**

- (1) Cabinet 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 a company’s reconstruction; or
  - (b) in its opinion it is equitable or in the public interest so to do.
- (2) Prior to the issue of a notice under subsection (1), Cabinet may require the enterprise to which the status or an approved enterprise is to be transferred, to comply with such conditions and to give such undertakings and assurances and in such form as it may consider desirable having regard to the public interest.
- (3) On the issue of a notice under subsection (1) all the 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.

**23. EFFECT OF CHANGE OF CORPORATE NAME**

- (1) Where an approved enterprise changes its corporate name, that enterprise shall within 14 days of the date of such change, inform the Minister in writing of its new corporate name.
- (2) On receipt of such information the Minister may, by notice published in the Gazette, direct that any order, licences or documents issued to or in respect of that enterprise under or under the provisions of this Act and enumerated in the notice, be altered to indicate the new corporate name.

**24. DEVELOPMENT STATUS NOT TO BE CONFERRED**

After the commencement of this Act, Cabinet shall not confer on any industry, product, factory or manufacturer the benefit of development status under the Development Incentives Act 1963.

**25. REGULATIONS**

- (1) Cabinet may make such regulations as it thinks necessary or expedient for giving effect to the provisions of this Act.
- (2) Regulations made under subsection (1) shall, within 30 days of their making, be subject to negative resolution of the House.

**26. RETROSPECTIVE EFFECT**

- (1) Cabinet may give retrospective effect to a regulation if it is satisfied that it is equitable for such regulation to have retrospective effect in order to confer a benefit on, or to remove a disability from an approved enterprise.
- (2) A regulation to which subsection (1) applies shall be subject to affirmative resolution of the House.

## SCHEDULE 1

(Section 2)

### MEMBER STATES

- |     |          |                          |
|-----|----------|--------------------------|
| (a) | Antigua  | St. Kitts/Nevis/Anguilla |
|     | Barbados | Jamaica                  |
|     | Grenada  | Montserrat               |
|     | Belize   | Saint Lucia              |
|     | Dominica | St. Vincent              |
|     | Guyana   | Trinidad and Tobago      |
- (b) any other state of the Caribbean region that becomes a member of the Common Market.

## SCHEDULE 2

### PART 1

(Section 16)

**\*EXPORTS TO THE FOLLOWING TERRITORIES ARE NOT ELIGIBLE FOR EXPORT ALLOWANCE**

Antigua	St. Kitts/Nevis/Anguilla
Barbados	Montserrat
Belize	Saint Lucia
Dominica	St. Vincent
Grenada	

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\* Delete whichever is necessary.

**PART 2**  
**METHOD OF CALCULATING EXPORT ALLOWANCE**

1. An export allowance set-off for the purposes of section 16 shall be calculated as follows—

<i>Export profits as a percentage of total profits</i>	<i>Rebate of income tax as a percentage of income tax on export profits</i>
10 but under 21 .....	25%
21 but under 41 .....	35%
41 but under 61 .....	45%
61 and over .....	50%

2. For the purposes of calculation—
- (a) “export profits as a percentage of total profits” shall be deemed to be “export sales as a percentage of total sales”;
  - (b) profit attributable to export shall be taken to be the amount resulting from the formula  $\frac{P \times E}{S}$  where—
    - (i) “P” represents the chargeable profit of a company for its year of income,
    - (ii) “E” represents the proceeds of sales (ex-factory) of the output of a company exported during its year of income,
    - (iii) “S” represents the proceeds of sales (ex-factory) of the total output of the company during its year of income.
3. In computing the proceeds of all sales for the year of income, there shall be deducted any excise duty paid on goods sold during that year.

**SCHEDULE 3**

(Section 12(1))

**TAX HOLIDAY PERIOD**

<i>Classification of Approved Enterprises Group</i>	<i>Tax Holiday Period Years</i>
Group I Enterprise.....	15
Group II Enterprise .....	12
Group III Enterprise .....	10
Enclave Enterprise .....	15