



ST CHRISTOPHER AND NEVIS

CHAPTER 20.14

FISCAL INCENTIVES ACT

and Subsidiary Legislation

Revised Edition

showing the law as at 31 December 2002

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[Orders Omitted]

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CHAPTER 20.14

FISCAL INCENTIVES ACT

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CHAPTER 20.14

FISCAL INCENTIVES ACT

AN ACT to give effect to an Agreement on harmonisation of fiscal incentives to industry; and to provide for related or incidental matters.

1. **Short title.**

This Act may be cited as the Fiscal Incentives Act.

2. **Interpretation.**

(1) In this Act,

“approved enterprise” means an enterprise declared by Order of the Governor-General under section 6 for the purpose of conferring a benefit under this Act;

“approved product” means a product declared by Order of the Governor 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 May 1st, 1974, all States referred to in the First Schedule and thereafter such of those States that are parties to the Treaty establishing the Caribbean Common Market;

“Comptroller” means the Comptroller of Customs;

“construction day” means the day specified in an Order made pursuant to 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 the State 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 fifty 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 twenty-five per centum but less than fifty 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 ten per centum but less than twenty-five 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 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 twelve months, exceeds the aggregate amount of the following:

- (i) the value of imported raw materials, content of components and parts thereof, fuels and services, but for the purpose of determining the value of the content of a component no account shall be taken of any element in the cost of a component other than the value of the imported raw material;
- (ii) wages, salaries or both paid during the twelve month period to persons who are not nationals of a Member State;
- (iii) profits distributed or remitted directly or indirectly to persons (including companies) who are not resident in a Member State;
- (iv) 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;
- (v) depreciation in the imports of plant, machinery and equipment, or any of them;

“Member State” means a State listed in the First Schedule;

“Minister” means the member of the Cabinet to whom responsibility for the subject of trade 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 for the time being in force;

“non-resident in a Member State”, in relation to a Company, means a company that is controlled directly or indirectly by a person (including a company) who is not resident in a Member State;

“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;

“State” means the State of Saint Christopher and Nevis.

(2) References in this Act to a section or a schedule are, unless the contrary intention appears, to a section of or a schedule of this Act, as the case may be; and references in a section to a subsection are, unless the contrary intention appears, to a subsection of that section.

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3. How local value added is to be computed.

(1) The local value added shall be weighed 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:

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

(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. When a non-resident may be deemed to have control of a company.

A non-resident shall be deemed 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. Power of Governor-General to declare a product to be an approved product.

The Governor-General may, by Order published in the *Gazette*, declare a product for manufacture by an approved enterprise to be an approved product.

6. Power of Governor-General to declare an enterprise to be an approved enterprise.

(1) The Governor-General, on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in the State 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 made under section 5, may, if he or she 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), the Governor-General 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 made 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 twelve 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 the Governor-General to specify a construction day;
 - (c) the production day which shall not be later than eighteen 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 the Governor-General 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. Grant of licence to approved enterprise to import from area outside Common Market and effect of licence.

(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 approved enterprise to import such article or any of them from an area outside the Common Market.

(2) On receipt of a licence issued pursuant to 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 subsection (3) or (4) of section 18, if the Comptroller 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.

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8. Records and inspection of articles and penalty.

- (1) An approved enterprise which
 - (a) imports into the State 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 subsection (2) of section 7 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;
 - (ii) cause the article to be marked with such mark and in such manner as may be required by the Comptroller; and
 - (iii) permit the Comptroller 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 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 fifteen thousand dollars.

[Amended by Act 9/1986]

9. Restriction on sale or other disposal of articles in the State or the Common Market and penalty.

- (1) An article imported by an approved enterprise free of customs duty under the provisions of subsection (2) of section 7 shall not be sold, given or otherwise disposed of by such enterprise in the State or in any other area of the Common Market except
 - (a) to the transferee, in case of a transfer of the 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 the provisions of subsection (2) of section 7, would have been payable on importation of such article into the State, where the article was so imported by the enterprise; or
 - (c) after the expiration of five 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 before a Magistrate, to a penalty of three times the value of the article, the disposal of which contravenes such provisions.

10. Benefits to be granted to approved enterprises and mode of classification of 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 determined.

11. Benefits for approved enterprise engaged in highly capital intensive industry.

(1) Where an approved enterprise is engaged in a highly capital intensive industry, the Governor-General 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 the Third Schedule.

(2) In this section, “highly capital intensive industry” means an industry the capital investment in which is not less than twenty-five million dollars.

12. Exemption from income tax for approved enterprises.

(1) The Governor-General may 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 the Third Schedule (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 the tax holiday period, and 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 of profits for purpose of exemption from tax.

In computing the profits of an approved enterprise for the purpose of exemption from income tax under subsection (1) of section 12, 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 for purpose of income tax relief and set off.

(1) The provisions of the Special Development (Additional Incentives) Act, No. 28 of 1968 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.

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

15. Losses may be carried forward for the purpose of set-off.

(1) Notwithstanding the provisions of section 12 of the Income Tax Act, Cap. 20.22, 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 five year period following the tax holiday period.

(2) Where the Order declaring an enterprise an approved enterprise is revoked by virtue of subsection (3) of section 16, 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 for purpose of income tax relief.

(1) Where a company has made export sales to a territory other than a territory listed in the Second Schedule 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 the Second Schedule if the company in a claim made for the purpose satisfies the Comptroller of Inland Revenue that the provisions of this section and of the Second Schedule are applicable to it.

(2) All exports of products of an industry and any other product specified by Order published in the *Gazette* shall be eligible for export allowance, provided that where the exports are to Guyana, Jamaica, or Trinidad and Tobago such allowance shall be granted for a period not exceeding five years next following the expiration of any relief granted under section 7 or section 12.

(3) During the period of five 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 section 12.

(4) An export allowance under subsection (2) of this section 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 Governor-General 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;

the Governor-General may issue a notice in writing requiring it within thirty 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 the Governor-General, 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 he or she considers reasonable.

(2) Where an approved enterprise satisfies the requirements of subparagraph (ii) of subsection (1), the Governor-General 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) The Governor-General may, having regard to all the circumstances of the case, if he or she thinks it expedient so to do, by Order published in the *Gazette*, revoke an Order made pursuant to 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 pursuant to section 17(1)(b).

(4) Subject to the provisions of subsection (2) of section 15, upon revocation of an Order made under section 6, the provisions of sections 7 and 12 shall be deemed never to have applied to the enterprise and such enterprise shall, notwithstanding anything contained in the Customs Tariff Act, Cap. 20.06 or the Income Tax Act, Cap. 20.22, pay to the Comptroller and the Comptroller of Inland Revenue any sums which, but for the provisions of subsection (2) of section 7 and of section 12 would have been payable as customs duty, surcharge duty or income tax.

(5) Notwithstanding the provisions of subsection (4), the Governor-General, if he or she thinks that the payment of any such sums would cause undue hardship, or if for any other reason he or she deems it expedient so to do, may remit the whole or part of any such sums to the enterprise.

(6) All sums payable under this section may be recovered summarily as a civil debt.

18. Restriction on use of factory of enterprise used for manufacture of approved products and penalty.

(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 ten years of the date of the publication of the Order declaring it an approved enterprise, without the prior approval of the Governor-General, be used for purposes other than the manufacture of an approved product.

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(2) An enterprise which contravenes the provisions of subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding one thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding seven hundred and fifty dollars for each day on which the offence continues after conviction.

[Amended by Act 9/1986]

(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 and the Comptroller of Inland Revenue under the provisions of subsection (2) of section 7 and of section 12 have been paid.

19. Power of Minister to appraise performance of enterprise other than enterprise engaged in highly capital intensive industry and effect of such appraisal.

- (1) The Minister shall,
- (a) at the expiration of three years from the production day; and
 - (b) thereafter at intervals of two 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 pursuant to subsection (1), an approved enterprise
- (a) fails to maintain its classification or cannot be re-classified to any of the other Groups listed in the Third 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 subsection (2) of section 7 and of section 12;
 - (b) maintains its classification or is reclassified to any of the other Groups listed in the Third Schedule, that enterprise shall continue as an approved enterprise and the provisions of paragraph (b) of subsection (1) 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, the Governor-General 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, the Governor-General 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 pursuant to subsection (1), serve notice of his or her decision on the approved enterprise.

(6) The provisions of this section shall not apply to a highly capital intensive industry.

20. Payment of Dividends of an approved enterprise not to be subject to time limit, etc.

(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) Notwithstanding any provision of the Income Tax Act and subject to subsection (3), the dividends of an approved enterprise 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 on monies borrowed by approved enterprise not to be exempt 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) The Governor-General 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 his or her opinion it is equitable or in the public interest so to do.

(2) Prior to the issue of a Notice pursuant to subsection (1), the Governor-General 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 or she may consider desirable having regard to the public interest.

(3) On the issue of a Notice pursuant to 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. Change of corporate name of approved enterprise.

(1) Where an approved enterprise changes its corporate name, that enterprise shall, within fourteen 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 orders, licences or documents issued to or in respect of that enterprise under or pursuant to the provisions of this Act and enumerated in the Notice, be altered to indicate the new corporate name.

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24. After commencement of this Act Pioneer status not be conferred.

- (1) After the commencement of this Act
 - (a) the benefit of pioneer status shall not be conferred on any industry, product, factory or manufacturer under the Aid to Pioneer Industries Act, Cap. 18.01;
 - (b) the Minister charged with responsibility for the subjects of Development and Tourism shall not declare any manufacturer to be a pioneer manufacturer for the purposes of the Special Development (Additional Incentives) Act, No. 28 of 1968.

(2) Where, prior to the commencement of this Act, an application to be declared a special developer was made by a pioneer manufacturer under the Special Development (Additional Incentives) Act, No. 28 of 1968 the provisions of that Act shall continue to apply to that application.

25. Regulations.

(1) The Governor-General may make such regulations as he or she thinks necessary or expedient for giving effect to the provisions of this Act.

(2) Regulations made under subsection (1) shall be laid before the National Assembly within thirty days after they have been made, and the National Assembly may, by resolution, amend or revoke the said regulations but without prejudice to the validity of anything previously done thereunder.

(3) In reckoning such period of thirty days no account shall be taken of any time during which the National Assembly is dissolved or prorogued.

(4) The Governor-General may give retrospective effect to a regulation if 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.

26. Exercise of powers of Governor-General.

The Governor-General shall exercise the powers vested in him or her by this Act in accordance with the advice of the Cabinet.

FIRST SCHEDULE

(Section 2)

MEMBER STATES

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

SECOND SCHEDULE

(Section 16)

PART 1**EXPORTS TO THE FOLLOWING TERRITORIES ARE NOT ELIGIBLE
FOR EXPORT ALLOWANCE**

Antigua	Grenada
Barbados	Montserrat
Belize	St. Lucia
Dominica	St. Vincent

PART 2**METHOD OF CALCULATING EXPORT ALLOWANCE**

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

Export profits as a percentage of total profits	Rebate of income tax as a percentage of income tax on export profits
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”;

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- (b) profit attributable to exports 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.

THIRD SCHEDULE

(Sections 11, 12 and 19(2))

TAX HOLIDAY PERIODS

Classification of Approved Enterprise	Tax Holiday Period
Group	Years
Group I Enterprise	15
Group II Enterprise	12
Group III Enterprise	10
Enclave Enterprise	15