
2nd Session Third Parliament Trinidad and Tobago
22 Elizabeth II



TRINIDAD AND TOBAGO
Act No. 36 of 1973

[L.S.]¹

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

*[Assented to 24th September, 1973]*¹

BE IT ENACTED by the Queen's Most Excellent Majesty, by ^{Enactment}
and with the advice and consent of the Senate and House
of Representatives of Trinidad and Tobago, and by
the authority of the same, as follows:—

1. This Act may be cited as the Fiscal Incentives Act, ^{Short title}
1973.

Interpretation

2. 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-General under section 5 for manufacture by an approved enterprise, but does not include a product listed in Schedule II or a product of an established industry;
- “benefit” means any relief granted to an approved enterprise under this Act;
- “Common Market” means until May 1st, 1974, all States referred to in Schedule I 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 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 Trinidad and Tobago and engaged or about to engage in an industry;
- “established industry” means an industry that supplies more than sixty per cent of the domestic market for any product;
- “factory” has the meaning assigned to that expression by section 2 of the Aid to Pioneer Industries Ordinance;
- “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;
- (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 Schedule I;

“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 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;

“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.

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 undermentioned formula—

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

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.

Value of
imported raw
material to
determine
value of
component

4. (1) In determining the value of the content of a component produced by a Member State for the purposes of paragraph (i) of section 2, no account shall be taken of any element in the cost of that component, except the value of the imported raw material content.

Meaning of
non-resident

(2) For the purposes of paragraph (iii) and (iv) of section 2, a company shall be deemed 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”).

Control by
non-resident

(3) A non-resident shall be deemed to have control of a company if he 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. 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. (1) The Governor-General on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in Trinidad and Tobago 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 he 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 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.

Licence to
import

7. (1) The Minister if he 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.

Effect of
licence

(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 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—

Revocation or
alteration of
licence

- (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. (1) An approved enterprise which—

(a) imports into Trinidad and Tobago from an area outside the Common Market; or

Record and
inspection
of articles

(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 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, 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 of the accuracy of the particulars contained in the record.

(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 five thousand dollars.

Penalty

Restriction
on sale or
other dis-
posal of
articles

9. (1) An article purchased 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 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 subsection (2) of section 7 would have been payable on importation of such article into Trinidad and Tobago, where the article was so imported by the enterprise;
- (c) after the expiration of five years from the date of the purchase of the article.

Penalty

(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 penalty of three times the value of the article, the disposal of which contravenes such provisions.

Benefits may
be granted to
certain enter-
prises

10. (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.

Mode of
classifi-
cation of
enterprises

(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

11. (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 Schedule III.

(2) In this section "highly capital intensive industry" means an industry the capital investment in which is not less than fifty million dollars, Eastern Caribbean Currency.

12. (1) The Governor-General may in his absolute discretion, grant to an approved enterprise exemption from Corporation Tax from the production day for a period not exceeding the period specified in Schedule III (hereinafter referred to as "the tax holiday period").

Exemption
from
corpora-
tion tax

(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; the income thus apportioned to the part of the accounting period which precedes the end of the tax holiday period shall be exempt from corporation tax.

Apportion-
ment of
income

13. In computing the profits of an approved enterprise for the purpose of exemption from corporation 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.

Compu-
tation of
profits

14. (1) The provisions of the Income Tax (In Aid of Industry) Ordinance 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 corporation tax.

Deduction
for capital
expenditure
Ch. 33. No. 2

(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.

Set-off

15. (1) Notwithstanding the provisions of section 13 of the Income Tax Ordinance, 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.

Losses may
be carried
forward
for the
purpose of
set-off
Ch. 33. No. 1

(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.

Power of Governor-General in the event of delay in commencement of construction or manufacture

16. (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 the Governor-General considers reasonable.

Construction or production may be altered

(2) Where an approved enterprise satisfies the requirements of subparagraph (ii), 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 thinks it expedient so to do, by Order published in the *Gazette* revoke an Order made pursuant to section 6, where an approved enterprise—

Revocation
of Order

- (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 16(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 Ordinance or the Income Tax Ordinance, pay to the Comptroller of Customs and Excise and the Board 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 or Corporation Tax.

Effect of
revocation
of Order

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

Governor-
General to
exercise
discretion
to remit
sums paid

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

17. (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.

Restriction on
use of factory

(2) An enterprise which contravenes the provisions of subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and in the case of a continuing offence to a further fine not exceeding two hundred and fifty dollars in respect of each day during which the offence continues after conviction thereof.

Penalty

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

Performance of enterprise to be appraised

18. (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.

Effect of reclassification

(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 Schedule III, 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 re-classified to any of the other Groups listed in Schedule III, 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 decision on the approved enterprise.

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

19. (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. Dividends not subject to time limit

(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. Exemption from 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 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 not to be exempted from income tax.

21. (1) The Governor-General may by Notice published in the *Gazette*, transfer the status of an approved enterprise to another enterprise where— Transfer of status of approved enterprise

(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 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 may consider desirable having regard to the public interest. Pre-requisites of transfer of status

(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. Effect of transfer

Effect of
change of
corporate
name

22. (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.

Pioneer
status not
to be
conferred

23. (1) Subject to the provisions of this section, after the commencement of this Act—

(a) the Governor-General shall not confer on any industry, product, factory or manufacturer the benefit of pioneer status under the Aid to Pioneer Industry Ordinance; and

(b) no manufacturing order shall be made or approved under any of the Acts or Ordinances listed in Schedule IV.

Savings

(2) Where, prior to the commencement of this Act, an application for pioneer status was made under any of the Acts or Ordinances listed in Schedule IV, the provisions of that Act or Ordinance shall continue to apply to that application.

Regulations

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

(2) Regulations made under subsection (1) shall, within thirty days of the making thereof, be subject to negative resolution of the Senate and the House of Representatives.

Retrospective
effect

25. (1) The Governor-General may give retrospective effect to a regulation if he 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 Senate and the House of Representatives.

Repeal
Ch. 33. No. 3

26. Section 8A of the Aid to Pioneer Industries Ordinance is repealed.

SCHEDULE I

MEMBER STATES

- | | |
|-------------|--------------------------|
| (a) Antigua | Jamaica |
| Barbados | Monsterrat |
| Belize | St. Kitts-Nevis-Anguilla |
| 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.

SCHEDULE II

PRODUCTS EXCLUDED FROM DEFINITION
OF APPROVED PRODUCTS

Aerated Water
 Automobile Mufflers (not produced as part of an integrated
 Automobile exhaust system)
 Bakery Products
 Beer
 Brushes and Mops
 Cardboard boxes
 Cigarettes
 Clocks
 Coir products, mats and matting
 Concrete blocks
 Concrete pipes (non-asbestos)
 Concrete tiles
 Copra
 Corrugated cardboard containers
 Drinking straws
 Edible oils and fats from copra
 Handicraft items
 Hats and Caps
 Hollow Ware (Aluminum)
 Mattresses
 Nails
 Paper bags
 Phonograph records
 Plastic film
 Pop corn
 Printing
 Rum
 Shirts and knitted underwear
 Stationery (other than continuous business forms)
 Syrups
 Tissue paper products
 Tubular Furniture (Aluminum)
 Twine
 Umbrellas
 Window Frames (Aluminum)

SCHEDULE III
TAX HOLIDAY PERIODS

<i>Classification of Approved Enterprise Group</i>	<i>Tax Holiday Period Years</i>
Group I Enterprise	9
Group II Enterprise	7
Group III Enterprise	5
Enclave Enterprise	10

SCHEDULE IV
ACTS AND ORDINANCES

- Cement Industry (Development) Ordinance, 1951.
- Lubricating Oils and Greases Industry Development Ordinance, 1961.
- Petrochemical Industry Development Act, 1962.
- Tyre Manufacturing Industry Development Act, 1967.
- Nitrogenous Fertilizer Industry (Development) Act, 1967.

Passed in the House of Representatives this 24th day of August, 1973.

G. R. LATOUR
Clerk of the House

Passed in the Senate this 28th day of August, 1973.

J. E. CARTER
Clerk of the Senate