

FISCAL INCENTIVES ACT

CHAPTER 85:01

Act
22 of 1979
Amended by
*11 of 1984
14 of 1994
21 of 2005
2 of 2006
17 of 2007
2 of 2012

*See Note on page 2

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on Omissions

The following Subsidiary Legislation made under the Act are omitted:

- (a) Orders made under section 4 (Declaring Approved Products).
- (b) Orders made under section 6 (Declaring Relief from Income Tax on Dividends of Approved Products).
- (c) Orders made under section 10 (Declaring an Enterprise to be an Approved Enterprise).
- (d) Orders made under section 11 (with respect to Orders made under section 10).
- (e) Orders made under section 12 (with respect to an Approved Enterprise).

N.B. For references to the above Orders see the Current Edition of the Consolidated Index of Acts and Subsidiary Legislation.

Note on Act No. 11 of 1984

See section 12 of Act No. 11 of 1984 which amends section 16 of the Income Tax (In Aid of Industry) Act (Ch. 85:04) with respect to concessions under the Fiscal Incentives Act.

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FISCAL INCENTIVES ACT

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CHAPTER 85:01

FISCAL INCENTIVES ACT

An Act to provide for fiscal incentives to Industry in accordance with the Agreement on Harmonisation of Fiscal Incentives to Industry. 22 of 1979.

[24TH SEPTEMBER 1973]

Commencement.

1. This Act may be cited as the Fiscal Incentives Act.

Short title.

2. (1) In this Act—

Interpretation.
[17 of 2007
2 of 2012].

“approved enterprise” means an enterprise so declared by Order of the President under section 10(1) for the purpose of conferring a benefit under this Act;

“approved product” means a product or service so declared by Order of the President under section 4(1) or section 10(1)(b);

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

“category” means any category specified in section 9(2);

“Common Market” means the Common Market established by the Annex to the Treaty;

“company” means a body corporate incorporated under the laws of Trinidad and Tobago;

“Comptroller”, in Part III and Part IV, means the Comptroller of Customs and Excise;

“construction day” means the day specified in the Order made under section 10 being a day not later than twelve months from the date on which the applicant for the status of an approved enterprise is notified that his application has been granted or such other day as the President may specify by Order under section 11(2);

“domestic market” means the Trinidad and Tobago market;

“enclave enterprise” means an enterprise whose product is produced exclusively for export to countries outside the Common Market;

“enterprise” means a company engaged or about to engage in an industry;

“established product” means a product the domestic production of which supplies at least sixty per cent of the domestic market for that product;

“factory” includes all buildings and structures within the same curtilage used for—

- (a) the housing of machinery, plant or apparatus of any description for the manufacture of any approved product or the generation of power for such manufacture;
- (b) the storage of any raw materials, fuel or stores necessary for the manufacture of the approved product;
- (c) the storage of any approved product prior to the time at which the property in such product passed from the approved enterprise to any other person;
- (d) the proper administration of the business of the approved enterprise in relation to the manufacture of the approved product and the sale thereof; or
- (e) canteens, restrooms, recreation rooms, lavatories, baths and wash rooms for workers employed by the approved enterprise in the manufacture of the approved product or in any process incidental to such manufacture;

Third Schedule. “former enactments” means the enactments specified in the Third Schedule that are repealed and replaced by this Act;

“group I enterprise” means an enterprise with respect to whose product the local value added is at least fifty per cent;

“group II enterprise” means an enterprise with respect to whose product the local value added is at least twenty-five per cent but less than fifty per cent;

“group III enterprise” means an enterprise with respect to whose product the local value added is at least ten per cent but less than twenty-five per cent;

“highly capital intensive enterprise” means subject to subsection (2), an enterprise with respect to whose product the Minister is satisfied that the capital investment therein is not less than fifty million dollars in the currency of Trinidad and Tobago or fifty million dollars in the currency of the Eastern Caribbean Member States, whichever is the greater;

“industry” means a manufacturing or processing industry and includes—

- (a) the making of films;
- (b) the following operations or any of them, but only where they form part of an integrated processing operation:
 - (i) the reproduction of films or sound recording;
 - (ii) the making of sound recording;
 - (iii) deep-sea fishing or shrimping; and
- (c) information services and processing;

“local value added” has the meaning assigned to it by section 3;

“Member State” means a member of the Common Market that is a party to the Agreement for the Harmonisation of Fiscal Incentives to Industry;

“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 specified in the Order made under section 10, being a day not later than thirty months from the date on which the applicant for the status of an approved enterprise is notified that his application has been granted or such other day as the President may specify by Order under section 11(2);

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

“tax holiday period” means the period mentioned in section 10(1)(c) during which benefits may be conferred on an approved enterprise;

“Treaty” means the Treaty establishing the Caribbean Community and Common Market done at Chaguaramas on 4th July 1973.

(2) In determining whether an enterprise is a highly capital intensive enterprise, the Minister may include or exclude such capital investment as he thinks fit and in so doing may have regard to the period of time over which and the purposes for which, the capital investment was made.

Local value added.

3. (1) The local value added is the amount (expressed as a percentage of the total sales of an approved product) by which the amount realised from the sales of that product over a continuous period of twelve months exceeds the aggregate amount of the following:

- (a) the value of imported raw materials, imported content of components and parts thereof, imported fuels and services;
- (b) wages, salaries or both paid during the twelve-month period to persons who are not nationals;
- (c) profits distributed or 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 who are not resident in a Member State, other than a branch or an agency in a Member State of a bank not resident in a Member State;
- (e) depreciation in the value of imports of plant, machinery and equipment, or any of them.

(2) For the purposes of subsection (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:

$$\frac{V(100+W)}{100}, \text{ where—}$$

“V” represents the local value added expressed as a percentage of the total sales of the approved product;

“W” represents the wages and salaries paid to nationals expressed as a percentage of the total sales of the approved product.

(3) For the purposes of estimating or determining the local value added, the Minister shall determine the twelve-month period referred to in subsection (1).

(4) In this section “imported” means imported from outside of the Common Market.

PART I

APPROVED PRODUCTS AND BENEFITS

4. (1) Without prejudice to section 10(1)(b), the President may by Order declare a product to be an approved product.

Approved product.

(2) Any product declared to be an approved product under section 10(1)(b) pursuant to an application by an enterprise for the grant of a benefit under this Act is an approved product for all the purposes of this Act as if it had been so declared under subsection (1).

(3) No product listed in the First Schedule shall be the subject of an Order under subsection (1) or under section 10(1)(b).

First Schedule.

5. (1) Subject to this Act, any one or more of the following benefits may be granted to an approved enterprise in respect of an approved product:

Benefits to be granted.

(a) total or partial relief from—

(i) corporation tax;

(ii) Customs duty;

(b) loss-offset in accordance with section 24.

- (2) An approved enterprise may not be granted—
- (a) loss-offset under subsection (1) unless it has been granted relief from corporation tax under this Act; and
 - (b) relief from corporation tax under this Act in respect of—
 - (i) subject to subsections (3) and (4), an established product;
 - (ii) an approved product during such time as an export allowance under section 8 of the Corporation Tax Act, is allowed in computing the chargeable profits of the enterprise; or
 - (iii) profits accruing before production day.

Ch. 75:02.

(3) Where in the opinion of the President the public interest so requires an approved enterprise may be granted relief from corporation tax under this Act although sixty per cent or more of the domestic market for the product is already supplied out of domestic production.

(4) Nothing in subsection (2)(b)(1) applies to an enclave enterprise and the President may exclude a highly capital intensive industry from the operation of that subsection if he is satisfied that it is in the public interest to do so.

Dividends out of profits from approved products.

6. (1) Where a benefit is granted to an approved enterprise in respect of an approved product, the President may, subject to section 16 and to such conditions as he may think fit, grant total or partial relief from income tax on dividends or other distributions, other than interest, out of profits or gains derived from the manufacture of the approved product during the tax holiday period.

(2) Where a shareholder or his nominee is not resident in a Member State the relief mentioned in subsection (1) shall apply to so much of the tax as exceeds the tax liability in the country in which the recipient is resident.

(3) Dividends and other distributions made out of profits or gains accruing to an approved enterprise from the manufacture of an approved product during its tax holiday period shall not be subject to any limitation as to the time within which those dividends are payable if a special account showing—

- (a) the dividends or other distributions made by the approved enterprise during the relevant period; and
- (b) the profits made during the tax holiday period,

is maintained by the enterprise to the satisfaction of the Board of Inland Revenue.

(4) In subsection (3), “relevant period” means the period beginning with the commencement of the tax holiday period of the approved enterprise and ending with the payment of the last dividend payable out of the profits or gains accruing during that period.

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

PART II

APPROVED ENTERPRISES

8. (1) An enterprise that is desirous of being granted a benefit under this Act may apply in writing to the Minister in accordance with subsection (2). Application for benefits.

(2) An application under subsection (1) shall be made in the form prescribed and shall specify—

- (a) whether the enterprise is resident in Trinidad and Tobago;
- (b) the locality or proposed locality of the factory in which the enterprise is manufacturing or intends to manufacture the product;

- (c) the day on which construction of the factory of the enterprise commenced or is likely to commence;
- (d) the day on which commercial production in the factory of the enterprise commenced or is likely to commence;
- (e) the product which the enterprise is manufacturing or intends to manufacture;
- (f) all information, supported by documentary evidence, which the Minister may consider relevant for the purposes of estimating or determining the local value added of the enterprise in the manufacture of the product and to the appraisal of its application.

(3) An enterprise is not eligible for the grant of the status of an approved enterprise unless it is resident in Trinidad and Tobago and an enterprise is so resident only where the central management and control of its affairs are situated in Trinidad and Tobago.

Classification of enterprise.

9. (1) Where an applicant is eligible for the grant of the status of an approved enterprise, the Minister shall consider every application made under section 8 for the purpose of determining—

- (a) whether the enterprise may be classified into any of the categories referred to in subsection (2); and
- (b) whether to make a recommendation to the President for the grant of the status of an approved enterprise on the applicant.

(2) Where the Minister so determines (having regard to the public interest) he may classify the enterprise to which the application relates into any one of the following categories:

- (a) group I enterprise;
- (b) group II enterprise;
- (c) group III enterprise;
- (d) enclave enterprise; or
- (e) highly capital intensive enterprise.

(3) No enterprise may be classified into more than one category at any one time but on an appraisal under section 13, an approved enterprise may be re-classified into a different category.

(4) In classifying an enterprise into any of the categories group I to III, no regard shall be had to the local value added in respect of any product listed in the First Schedule.

First Schedule.

(5) Subject to subsection (6), an enterprise shall not be classified in respect of a product for which it or any of its associates was granted exemption from corporation tax under the former enactments.

(6) Where, at the commencement of this Act, an enterprise enjoys under the former enactments any relief that corresponds to a benefit under this Act for a period that is less than the maximum tax holiday period that may be granted to an approved enterprise the Minister may, subject to section 10(4), treat the application of such an enterprise, if eligible, in accordance with this section.

(7) Nothing in subsection (6) shall apply to—

- (a) an established product; or
- (b) an associate,

of such an enterprise.

(8) In this section, “associate” means—

- (a) an enterprise that is the parent, subsidiary or affiliate of the enterprise in respect of which an application is made under section 8; or
- (b) an individual who has a controlling interest in that enterprise.

10. (1) Where pursuant to section 9 an enterprise is classified, the President may, if he is satisfied that it is in the public interest to do so, by Order—

Order may declare enterprise to be an approved enterprise.

- (a) declare the enterprise to be an approved enterprise in respect of the product, with effect from the date specified in the Order;
- (b) declare the product to be an approved product unless it has already been so declared under section 4(1);

Second
Schedule.

- (c) confer on the approved enterprise in respect of its approved product for a period not exceeding that specified in the Second Schedule any or all of the benefits enumerated at section 5(1);
- (d) grant to the shareholders of such an enterprise the relief mentioned in section 6.

(2) On the expiration of the tax holiday period by effluxion of time, the President may, if he is satisfied that it is in the public interest to do so, by Order extend the tax holiday period for any further period which when aggregated with the expired tax holiday period does not exceed the period specified in the Second Schedule.

(3) For the purposes of determining whether to make an Order under subsection (1), the President shall take into account—

- (a) the number of enterprises manufacturing or about to manufacture the product;
- (b) the benefits already enjoyed by the enterprise and the manufacturing process undertaken or about to be undertaken by it;
- (c) the output or anticipated output of the enterprise;
- (d) such other matters as he may consider relevant.

(4) The tax holiday period that may be granted to an enterprise classified pursuant to section 9(2) may not exceed the excess of the greatest period that may be obtained under this Act for the category in which the enterprise is classified over the period during which the enterprise was entitled to any relief under the former enactments.

Contents of
Order.

11. (1) An Order made under section 10(1) shall, in respect of each approved enterprise, specify the construction day or the production day or both such days and may—

- (a) declare that in its application it shall be restricted to a part of a factory, to a particular grade, quality, description, type or classification of product and to a particular process, or any of them;
- (b) impose continuing obligations;

- (c) provide for its revocation in any case of breach or of non-compliance with its requirements, or any of them.
- (2) The President may, if he thinks fit, by Order—
 - (a) vary the construction day or the production day or both such days;
 - (b) vary the description of an approved product;
 - (c) specify any change in the factory site of an approved enterprise.

12. An approved enterprise on which a benefit has been conferred under this Act shall in addition to any other obligation that may be imposed on it by Order of the President under section 10(1)—

Enterprise to maintain records and submit returns.

- (a) maintain such records and keep such accounts;
- (b) submit to the Minister such returns of its performance,

as the Minister may direct.

13. (1) The Minister may at any time he considers appropriate and shall on the expiration of three years from the production day and 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 the approved enterprise is maintaining its classification.

Minister to appraise.

(2) Where on an appraisal an approved enterprise is found not to be maintaining its classification the Minister shall decide whether it may be reclassified into any of the other categories and, if it can be so reclassified shall as soon as possible reclassify it accordingly and shall in any event notify the approved enterprise of his decision.

(3) Where on an appraisal made before the expiration of three years from the production day an approved enterprise—

- (a) is found not to be maintaining its classification; and
- (b) is not reclassified into any of the other categories,

the Order respecting that enterprise shall, with effect from the date of the notice given under subsection (2), be deemed to be revoked for the purpose of relief under section 5(1)(a).

(4) Where on an appraisal made at the expiration of three years from the production day an approved enterprise—

- (a) is found to be maintaining its classification; or
- (b) is reclassified into any other category,

that enterprise shall, for the purposes of this Act, continue to be an approved enterprise, but subject to the terms and conditions of an Order made under section 10(1) or any extension thereof or to a fresh Order made under subsection (5).

(5) Where as a result of the reclassification of an approved enterprise into a different category, the tax holiday period for which it had previously qualified is no longer applicable, the President shall by Order vary the tax holiday period so as to coincide with the maximum period allowable to an enterprise in the category into which it has been reclassified or to such lesser period as the President may determine.

Revocation of Order.

14. The President may by Order—

- (a) revoke an Order made under section 4(1); or
- (b) revoke an Order made under section 10(1) or revoke the Order with respect to an approved product where an approved enterprise—
 - (i) ceases to operate in respect of its approved product during the period of three years from production day;
 - (ii) contravenes any of the provisions of this Act or the Regulations or any terms or conditions of the Order; or
 - (iii) fails to comply with the requirements of a notice issued under section 17.

Termination of Order.

15. (1) The President may by Order—

- (a) terminate an Order made under section 4(1); or

(b) terminate an Order made under section 10(1) or terminate the Order with respect to an approved product—

- (i) subject to subsection (2), on an application in writing, through the Minister, by the approved enterprise made before the expiration of the period of three years from production day;
- (ii) where on an appraisal made on or after the expiration of the period of three years from production day an enterprise is found not to be maintaining its classification and is not reclassified into any of the other categories listed in section 9(2);
- (iii) where after the expiration of the period of three years from production day an approved enterprise ceases to operate in respect of its approved product.

(2) An Order may not be terminated by the President upon an application made by an approved enterprise under subsection (1)(b)(i) unless the President is satisfied that the approved enterprise is unable to continue operations because of circumstances over which it has no control.

(3) In the case referred to in subsection (1)(b)(iii), the Order for termination may be made to have effect from the last occasion on which the approved enterprise was found to be maintaining its classification in any category.

16. (1) Subject to section 24(3), where an Order—

- (a) is deemed to be revoked in accordance with section 13(3); or
- (b) is revoked pursuant to section 14,

this Act shall be deemed never to have applied to the enterprise and the enterprise shall, notwithstanding anything contained in the Income Tax Act or the Customs Act, pay to the Board of Inland

Effect of
revocation and
termination of
Order.

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Revenue and to the Comptroller of Customs and Excise any sums which, but for the provisions of sections 5(1)(a) and 20, would have been payable as corporation tax or Customs duty, as the case may be.

(2) Except as is otherwise expressly provided for in this Act where an Order is terminated under section 15 all benefits granted to an approved enterprise and all relief from income tax on dividends or other distributions under section 6(1) cease as from the date of the Order for termination or in any case provided for by section 15(3) from the date on which the Order for termination is expressed to have effect.

(3) Where an Order—

- (a) is deemed to be revoked in accordance with section 13(3); or
- (b) is revoked pursuant to section 14,

all relief from income tax on dividends or other distributions under section 6(1) is lost and tax is payable to the Board of Inland Revenue on any such dividend or other distribution whether made before or after the Order is deemed revoked or is revoked, as the case may be.

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

Power of Minister where there is delay in the commencement of construction or manufacture.

17. Where an approved enterprise fails or neglects—

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

the Minister may issue a notice in writing requiring the enterprise 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 Minister 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 Minister considers reasonable.

PART III

IMPORTATION OF GOODS BY APPROVED ENTERPRISE

18. (1) The Minister may, during the tax holiday period of an approved enterprise, issue to that enterprise a licence to import from outside of the Common Market any plant, equipment, machinery, raw material or any component (except spare parts and replacement parts) where he is satisfied that the plant, equipment, machinery, raw material or the component—

Minister may issue licence to import plant, equipment, machinery, etc.

- (a) is required for use in the manufacture of an approved product; and
- (b) is unavailable from the production of a Member State.

(2) Subsection (1) does not apply to an enclave enterprise and a licence issued under that subsection or under subsection (3) shall be subject to such terms and conditions as the Minister considers appropriate.

(3) Notwithstanding anything to the contrary in subsection (1), the Minister may during the tax holiday period of an approved enterprise issue to that enterprise a licence—

- (a) to import from outside of the Common Market the articles specified in subsection (1), or any of them, where such articles are available from the production of a Member State but do not satisfy the area origin criteria;
- (b) to import from within the Common Market the articles referred to in paragraph (a) or any of

them, even though they do not satisfy the area origin criteria.

(4) For the purposes of subsection (3), “area origin criteria” means those rules in force under the Treaty for determining the eligibility of goods for duty-free treatment in trade in the Common Market, where such goods originate within the Common Market.

(5) In determining whether an article is available from the production of a Member State the Minister shall take into account the price at which the article can be obtained from a Member State and whether—

- (a) the article is manufactured in accordance with the accepted standards prescribed by the Bureau of Standards or is certified by a competent Regional Authority as being of acceptable quality in terms of the specifications of the approved enterprise;
- (b) the regularity of supplies can be guaranteed;
- (c) the capacity of the facilities in the Member State for producing the article is adequate to supply the needs of the approved enterprise; and
- (d) the facilities for constructing or producing the article in the Member State, if any, are capable to construct or produce the article.

Minister may issue licence to enclave enterprise to import plant, equipment, etc.

Second Schedule.

19. (1) The Minister may, during the tax holiday period of an enclave enterprise, issue to that enterprise a licence to import from outside of the Common Market any plant, equipment, machinery, raw material or any component (except spare parts and replacement parts) for a period not exceeding that specified in the Second Schedule if the conditions specified in section 20 are satisfied.

- (2) A licence issued under subsection (1) shall—
- (a) be subject to such terms and conditions as the Minister considers appropriate; and
 - (b) where the Minister is satisfied that the raw material or the component is available from a

Member State, in addition to any other conditions which he may impose, specify the amount of the raw material or the component which the enclave enterprise may import.

20. (1) Notwithstanding the provisions of section 56 of the Customs Act, an approved enterprise, on receipt of a licence issued pursuant to section 18(1) or (3) or to section 19(1), may import such plant, equipment, machinery, raw material or component (except spare parts and replacement parts) free of Customs duty if the Comptroller is satisfied that the plant, equipment, machinery, raw material or the component is intended for use—

Approved enterprise may import plant, equipment, etc., free of Customs duty.
Ch. 78:01.

- (a) in constructing, altering, reconstructing or extending the approved enterprise;
- (b) in equipping the enterprise for the purpose of manufacturing its approved product; or
- (c) in manufacturing its approved product.

(2) No licence issued under section 18 or 19 may authorise the importation of duty free articles after the expiration of the tax holiday period.

21. An approved enterprise which imports any article in respect of which it was granted exemption from the payment of Customs duty by virtue of this Part shall—

Approved enterprise to keep record of articles imported free of Customs duty.

- (a) keep a record of the articles imported in such form and containing such particulars as may be approved or required by the Comptroller;
- (b) permit the Comptroller or any person authorised by him in writing at all reasonable times to inspect the record and to have access to any factory or warehouse under its control for the purpose of—
 - (i) examining any of the articles referred to in paragraph (a) which the Comptroller has reason to believe to be therein; and
 - (ii) satisfying himself of the accuracy of the particulars contained in the record;

- (c) cause the articles to be marked with such mark and in such manner as may be prescribed;
- (d) at the end of each calendar year and at such other times as may be specified by the Comptroller submit to him an inventory of all plant, equipment, raw material or component, or any of them, imported free of Customs duty.

Restriction on sale or other disposal of certain articles.

22. (1) Where pursuant to this Part an article is imported by an approved enterprise free of Customs duty, the article shall not, before the expiration of ten years from the date on which it was imported, be sold, given away or otherwise disposed of by the enterprise except—

- (a) where the approved enterprise pays or gives security to the satisfaction of the Comptroller for the payment of an amount which, but for the provisions of this Part would have been payable; or
- (b) with the prior approval in writing of the Minister, after the expiration of five years from the date on which the article was imported.

(2) An approved enterprise which contravenes the provisions of subsection (1) is liable on summary conviction to a penalty of three times the value of the article the disposal of which contravened those provisions.

Ch. 78:01.

- (3) Subject to this Part, the Customs Act shall apply to—
 - (a) the importation and use of all goods in respect of which a licence is issued under this Act; and
 - (b) the exportation of any approved product of an approved enterprise.

PART IV

CORPORATION TAX PROVISIONS

Deduction for capital expenditure. [14 of 1994 2 of 2006].

23. (1) In computing the profits of an approved enterprise for the purpose of relief from corporation tax under section 5(1)(a)(i), the enterprise shall be required to claim the allowance for the exhaustion by wear and tear resulting from the use of its assets in—

- (a) the year of income in which the assets were first put into use by the enterprise; and

(b) the years immediately following the year of income in which the claim referred to in paragraph (a) was made.

(1A) A claim for an allowance under subsection (1) may not be deferred.

(2) Section 8 of the Corporation Tax Act (which provides for the grant of an export allowance) shall not apply in computing such of the chargeable profits of an approved enterprise as are derived from the manufacture of an approved product where the enterprise is in receipt of any benefits referred to in section 5(1)(a). Ch. 75:02.

24. (1) Notwithstanding section 16 of the Income Tax Act but subject to subsection (2) of this section, on the expiration of the tax holiday period of an approved enterprise which enjoyed a benefit under section 5(1)(b), the net losses incurred by the enterprise during that period in respect of its approved product shall— Losses may be carried forward for the purpose of set-off. Ch. 75:01.

(a) be carried forward; and

(b) without any limitation as to the amount of the set-off, be set-off in computing the chargeable profits of the approved enterprise for the five-year period immediately following the tax holiday period.

(2) Nothing in subsection (1) shall apply so as to allow such set-off against any profits of an approved enterprise derived otherwise than from the manufacture of an approved product.

(3) Where an Order—

(a) is deemed to be revoked in accordance with section 13(3); or

(b) is revoked pursuant to section 14,

the enterprise shall be deemed to continue to be an approved enterprise for the purposes of carrying forward, under subsection (1), any net losses incurred before the revocation of the Order.

(4) Section 16 of the Income Tax Act shall apply so as to allow the set-off of any balance of the net losses remaining at the end of the five-year period.

(5) Notwithstanding anything to the contrary in the Aid to Pioneer Industries Ordinance (repealed by this Act) any net losses Ch. 33, No. 3. (1950 Ed.).

incurred by an enterprise during a period of tax exemption under that Ordinance shall be taken into account for the purposes of computing net losses under this section.

(6) For the purposes of this section “net losses” means the excess of all losses over all profits or gains made during the tax holiday period.

Allowances to be taken into account in computing profits for purpose of relief from corporation tax. Ch. 33, No. 3. (1950 Ed.).

25. Where an enterprise was granted a period of tax exemption under the Aid to Pioneer Industries Ordinance (repealed by this Act) and allowances for wear and tear of plant, machinery or buildings fall to be made—

- (a) on or after the expiration of that period; and
- (b) in respect of such plant, machinery or buildings purchased or acquired during that period,

such allowances shall be taken into account computing the profits of the enterprise for the purpose of relief from corporation tax as though the expenditure incurred in respect of such plant, machinery or buildings was incurred on the first day of the tax holiday period granted to the enterprise under this Act.

25A. (Repealed by Act No. 2 of 2006).

Profits for accounting period to be apportioned.

26. (1) Where an approved enterprise has been granted total or partial relief from corporation tax under section 5(1)(a) (i) and the expiration of the tax holiday period of the enterprise does not coincide with the end of its accounting period, the profits accruing from the manufacture of the approved product in the accounting period during which the tax holiday period ends shall be apportioned between the parts of the accounting periods which respectively precede and follow the end of the tax holiday period.

(2) The profits apportioned to that part of the accounting period which precedes the end of the tax holiday period are eligible for total or partial relief from the payment of corporation tax.

Allocation of outgoings and expenses.

27. Where an approved enterprise is engaged in more than one industry and the product of one of those industries is an approved product under this Act, such portion of the out-goings

and expenses incurred in common by the enterprise for the purposes of those industries shall be allocated to the industry manufacturing or producing the approved product in such manner as the Board may direct.

PART V

MISCELLANEOUS

28. (1) Except with the written approval of the Minister, no factory of an approved enterprise used or intended to be used for the manufacture of an approved product may be disposed of or used for purposes other than the manufacture of the approved product, during the tax holiday period prescribed by the Order declaring the enterprise an approved enterprise or any variation thereof and whether or not the Order is revoked. Restriction on use of factory.

(2) Except with the written approval of the Minister no factory of an approved enterprise, other than an enterprise whose status as such was revoked, may be disposed of or used for purposes other than the manufacture of products that were its approved products, within five years of the termination of its tax holiday period.

(3) Nothing in subsection (1) applies to an enterprise whose status as such was revoked if all sums due and payable to the Comptroller and to the Board of Inland Revenue pursuant to section 16(1) have been paid.

(4) An approved enterprise which contravenes subsection (1) is liable on summary conviction to a fine of five thousand dollars and in the case of a continuing offence to a further fine of five hundred dollars in respect of each day during which the offence continues after conviction thereof.

(5) An approved enterprise which contravenes subsection (2) is liable on summary conviction to a fine of two thousand five hundred dollars and in the case of a continuing offence to a further fine of two hundred and fifty dollars in respect of each day during which the offence continues after conviction thereof.

Transitional.

29. (1) Subject to subsection (2), all applications pending under the former enactments shall be deemed to have been made under this Act and the provisions of this Act shall apply accordingly.

Ch. 33, No. 3.
(1950 Ed.).

(2) Where an application for pioneer status was made under the Aid to Pioneer Industries Ordinance (repealed by this Act) and—

- (a) no Order was made upon such application; and
- (b) the application is pending at the commencement of this Act—
 - (i) the Order may, in the discretion of the President, be made under this Act;
 - (ii) the Aid to Pioneer Industries Ordinance shall continue to apply with respect to the conditions concerning the grant of the status of an approved enterprise; and
- (c) nothing in this Act in conflict or at variance with those provisions shall apply to such an application except that the provisions of this Act governing the importation of goods shall apply to any such enterprise.

President or
Minister to have
absolute
discretion.

30. The exercise of the powers vested in the President and in the Minister under this Act shall be in their absolute discretion.

Regulations.

31. (1) The President may make such Regulations as he considers necessary or expedient for giving effect to the provisions of this Act and in particular may make Regulations prescribing anything that is required or authorised to be prescribed by or under this Act.

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

Application of
Act.
[17 of 2007].

32. The benefits under section 5(1)(a)(i) shall apply only to an approved enterprise which made an application for the grant of the status of an approved enterprise on or before 31st December 2006 and was granted such benefits prior to 1st January 2008.

FIRST SCHEDULE

Sections 4(4)
and 9(4) and (5).

**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 (aluminium)
Mattresses
Nails
Paper bags
Phonograph records
Plastic film
Popcorn
Printing
Rum
Shirts and knitted underwear
Stationery (other than continuous business forms)
Syrups
Tissue paper products
Tubular furniture (aluminium)
Twine
Umbrellas
Window frames (aluminium)

Section 10(1)
and (2).

SECOND SCHEDULE

MAXIMUM TAX HOLIDAY PERIODS

<i>Classification of Approved Enterprise Categories</i>					<i>Tax Holiday Periods Years</i>
Group I Enterprise	...	...	...	...	9
Group II Enterprise	...	...	...	...	7
Group III Enterprise	...	...	...	...	5
Enclave Enterprise	...	...	...	...	10
Highly Capital Intensive Industries	...	...	...	...	10

Section 2(1).

THIRD SCHEDULE

ENACTMENTS

Aid to Pioneer Industry Ordinance, Ch. 33. No. 3. (1950 Ed.).

Cement Industries (Development) Ordinance 1951, Ch. 33. No. 17 (Supp. Vol. I).
(1951–53 Ed.).

Nitrogenous Fertilizer Industry (Development) Act 1958, No. 3 of 1958.

Lubricating Oils and Greases Industry Development Ordinance 1961,
No. 44 of 1961.

Petrochemical Industry Development Act 1962, No. 4 of 1962.

Tyre Manufacturing Industry Development Act 1967, No. 39 of 1967.