
LAWS OF SAINT VINCENT AND THE GRENADINES
REVISED EDITION

FISCAL INCENTIVES ACT

CHAPTER 468

Act No.
5 of 1982

Amended by
Act No. 20 of 1987
Act No. 16 of 1991

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CHAPTER 468**FISCAL INCENTIVES ACT**

An Act to give effect to the Agreement on Harmonisation of Fiscal Incentives to Industry.

[Act No. 5 of 1982 amended by Act No. 20 of 1987, Act No. 16 of 1991.]

[Date of commencement: 13th August, 1982.]

[SRO 46 of 1982.]

1. Short title

This Act may be cited as the Fiscal Incentives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**approved enterprise**” means an enterprise declared under section 6 as an approved enterprise for the purposes of this Act;

“**approved product**” means a product declared as an approved product under section 5;

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

“**Common Market**” means the Caribbean Common Market established by a treaty amongst the member states set out in the First Schedule;

“**Comptroller**” means the Comptroller of Customs and Excise;

“**construction day**” means the date specified under section 6;

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

“**enterprise**” means a company incorporated, or a corporate body established, under the Laws of Saint Vincent and the Grenadines with a view to engage in an industry;

“**Group I Enterprise**” means an enterprise in respect of which the local value added is fifty per cent or more 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 twenty-five per cent or more but less than fifty per cent 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 ten per cent or more but less than twenty-five per cent of the amount realised from the sales of the 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, namely—

- (a) the value of imported raw materials, content of components and parts thereof, fuel and services;
- (b) wages, salaries or both paid during the twelve month period to persons who are not nationals of a member state;
- (c) profits distributed or remitted directly 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 agency of a bank not resident in a member state;
- (e) depreciation in the imports of plant, machinery and equipment, or any of them;

"Member State" means any state mentioned in the First Schedule;

"Minister" means the Minister who, for the time being, is in charge of industry;

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

"person" includes a company or other corporate body;

"production day" means the day on which an approved enterprise commences production of an approved product;

"sales proceeds" means the proceeds of a sale ex-factory of an approved product exclusive of the cost of distribution.

3. Computation of local value added

(1) The local value added shall be 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 under mentioned formula—

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

(2) For the purpose 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. Rules to determine local value added

(1) The value of the content of a component produced by a member state shall, for the purposes of computing the "local value added" include only the value of the imported raw material content in that component and not any other element in the cost of that component.

(2) For the purposes of determining "local value added" under section 2, a company or other corporate body shall not be deemed to be resident in a Member State if it is directly or indirectly controlled by a person who is not a resident in a Member State:

Provided that a non-resident shall be deemed to be in control of a company or other corporate body if he owns, or is entitled to purchase, the greater part of the ordinary and paid up share capital (excluding shares which carry no voting rights) of the company or other corporate body as the case may be.

5. Approved product

Cabinet may, by order in the *Gazette*, declare any product as an approved product for the manufacture by an approved enterprise.

6. Declaration of approved enterprise

(1) Cabinet may, on an application made by or on behalf of an enterprise—

- (a) for the establishment of an industry in Saint Vincent and the Grenadines to manufacture an approved product; or
- (b) which, on the 13th August, 1982, is manufacturing the product in Saint Vincent and the Grenadines which is declared to be an approved product under section 5 and wants to avail of the benefits under this Act,

if it is satisfied that it is in the public interest to do so, declare the enterprise to be an approved enterprise with effect from such date as may be specified in the order.

(2) In determining whether an order should be made under subsection (1), Cabinet shall have due regard to—

- (a) the number of enterprises already manufacturing or about to manufacture an approved product;
- (b) the output, or the anticipated output, of the enterprise; and
- (c) the viability of the enterprise.

(3) An order under subsection(1)—

- (a) shall specify the construction day, production day or both days;
- (b) may declare in its application that it shall be restricted to a part of the factory, or to a particular grade, quality, description, type or classification of its 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) Every application under subsection (1) shall be submitted in writing to the Minister and shall contain —

- (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 Minister may specify a special construction day and the application shall contain all the information that may enable the Minister to specify a construction day;
- (c) the production day, which shall not be later than eighteen months from the construction day, except that in a case where the production of an approved product has already commenced the Minister may specify a special production day and the application shall contain all information that may be necessary to enable him to specify a production day;
- (d) the approved product already being manufactured or intended to be manufactured;
- (e) all information, supported by documentary evidence, relevant to the determination of the local value added.

7. Licence to import

(1) The Minister may, 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, issue a licence to an approved enterprise to import all 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 16(3) and (4), 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.

8. Record and inspection of articles

(1) An approved enterprise which —

- (a) imports into Saint Vincent and the Grenadines from an area outside the Common Market; or
- (b) purchases within the Common Market, any article in respect of which it has been granted exemption from customs duty by virtue of section 7(2) shall—
 - (i) keep a record of the articles so imported or purchased in such form, and containing such particulars, as may be required by the Comptroller,
 - (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, 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 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 to a fine of four thousand dollars.

9. Restriction on sale or other disposal of articles

(1) An article purchased by an approved enterprise free of customs duty under the provisions of section 7(2) shall not be sold, given or otherwise disposed of by such enterprise except —

- (a) to the transferee, in case of a transfer of the ownership of a factory belonging to the enterprise;
- (b) where the approved enterprise pays or gives security to the satisfaction of the Comptroller for the payment of an amount of customs duty which, but for the provisions of section 7(2), would have been payable on importation of such article into Saint Vincent and the Grenadines; 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 subsection(1), is guilty of an offence and liable to a fine of an amount not exceeding three times the value of the article the disposal of which contravenes such provisions.

10. Benefits may be granted to certain enterprises

(1) An approved enterprise may be granted a benefit under this Act only if it is classified under one of the following —

- (a) Group I Enterprise
Group II Enterprise
Group III Enterprise;
- (b) Enclave Enterprise.

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

(3) For the purpose of this section Cabinet may pass an order classifying any enterprise.

11. Benefits for enterprise engaged in highly capital intensive industry

(1) Where an approved enterprise is engaged in a highly capital intensive industry, Cabinet may, by order 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, Eastern Caribbean currency or its equivalent.

12. Exemption from income tax

(1) Notwithstanding anything contained in the law relating to income tax for the time being in force, Cabinet may, in its discretion and subject to such conditions as it may deem fit to impose, grant to an enterprise complete or partial exemption from income tax as from the production day for a period specified in the Third Schedule (hereinafter referred to as "tax holiday period"):

Provided that it shall be the duty of every such enterprise to submit an annual return of income as required by the law relating to income 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 period falls shall be apportioned between the parts of the accounting periods, and the income thus apportioned to the part of the accounting period shall be exempt from income tax.

13. Computation of profits

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

14. Deduction for capital and expenditure and set-off

(1) The provisions of the law relating to income tax for the time being in force shall apply to an approved enterprise, from the first day following the day on which the tax holiday ends, except that a deduction as an initial allowance for capital expenditure shall only be in respect of expenditure incurred after the expiration of the period of exemption from income tax.

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

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

(1) Notwithstanding the provisions contained in the Income Tax Act, on the expiration of the tax holiday under that Act, the net losses incurred during the period may be carried forward for the purposes of set-off in computing the profits taxable under the said Act for the approved enterprise for the five year period following the tax holiday period.

[Chapter 435.]

(2) Where an order declaring an enterprise as an approved enterprise under this Act is thereafter revoked, the enterprise shall, for the purpose of carrying forward net losses incurred prior to the revocation of the order, be deemed to be an approved enterprise.

(3) For the purpose of this section, "net losses", in relation to an approved enterprise, means the excess of all losses over all profits made during the tax holiday period during which it was an approved enterprise.

16. Grant of export allowance

(1) Where an enterprise has made sales by way of export to a territory other than a territory listed in the Second Schedule, in computing the tax chargeable for any year on the income of that enterprise there shall be set-off an export allowance calculated in the manner specified in Part 2 of that Schedule if the enterprise makes a claim in that behalf and 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 approved products of an industry, and any other product that Cabinet may, by order in the *Gazette* specify, shall be eligible for export allowance:

Provided that, where the exports are to Guyana, Jamaica or Trinidad and Tobago, such allowance shall be confined to a period not exceeding five years next following the expiration of the tax holiday period referred to in section 12.

(3) During the period of five years after 13th August, 1982, an enterprise may claim relief under this section in respect of the exportation to Guyana, Jamaica or Trinidad and Tobago even if the enterprise is not eligible to the benefit envisaged in section 7 or 12 or both.

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

17. Delay in commencement of construction or of manufacture

(1) Where an approved enterprise fails or neglects—

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

the Minister may issue a notice in writing requiring it, within thirty days of the date of the 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 a reasonable prospect of its commencing construction of the factory or the manufacture of the approved product in marketable quantities, as the case may be, within such time as the authority may, having regard to circumstances of the case, consider reasonable.

(2) Where an approved enterprise satisfies the authority as required by subsection (1)(i), Cabinet shall, by order in the *Gazette*, substitute for the construction day or the production day, as the case may be, some other specified day, and thereupon the provisions of this Act shall take effect as if the specified day was substituted in the order made in relation thereto under section 6.

(3) Cabinet may, having regard to all the circumstances of the case if it thinks it expedient to do so, by order in the *Gazette*, revoke the order made under section 6 if an approved enterprise —

- (a) contravenes any of the provisions of this Act or of the regulations made hereunder; or
- (b) fails to comply with the requirements of a notice issued under section 17(1);

(4) Save as provided in section 15(2), where an order made under section 6 has been revoked under this section the provisions of sections 7 and 12 shall be deemed never to have applied to the enterprise and such enterprises shall, notwithstanding anything contained in the law for the time being in force relating to customs or income tax, pay to the Comptroller and to the Comptroller of Inland Revenue any sum which, but for the provisions of sections 7(2) and 12, would have been payable.

(5) Cabinet may, notwithstanding the provisions concerned in subsection (4), remit the whole part or part of any customs duty or income tax that may become payable by reason of the order having been revoked if it is satisfied that it would otherwise cause undue hardship or that there are other valid grounds for granting remission.

(6) All sums that became payable by reason of any action taken under this section may be recovered summarily as if it were a civil debt.

18. Restrictions on use of factory

(1) Any factory belonging to an enterprise which is being used, or is intended to be used, for the manufacture of an approved product shall not, within ten years of the publication of the order declaring it to be an approved enterprise, be used without previous approval of Cabinet for any purpose other than the manufacture of an approved product.

(2) Any enterprise which contravenes the provisions of subsection (1) is guilty of an offence and liable to a fine of eight thousand dollars and in the case of a continuing offence to a further fine of four thousand dollars in respect of each day during which the offence continues after conviction thereof.

(3) The provisions of subsections (1) and (2) shall not apply to an enterprise which has ceased to be an approved enterprise and in respect of which all sums payable to the Comptroller of Inland Revenue under the provisions of sections 7(2) and 12 have been paid.

19. Appraisal of performance of enterprise

(1) The Minister shall, at the expiration of two years from the production day, and thereafter at intervals of one year until cessation of all benefits under this Act, appraise the performance of an approved enterprise for the purpose of determining whether any change in classification is necessary.

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

- (a) fails to maintain its classification or cannot be reclassified 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 section 7(2) or 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 subsection (1) shall continue to apply.

(3) Where, as a result of the reclassification of an approved enterprise to a lower group, the tax holiday period exceeds the maximum period allowable in that lower group Cabinet shall, by order in the *Gazette*, reduce the period so as to coincide with the maximum period allowable in the lower group to which the approved enterprise has been reclassified.

(4) Where an approved enterprise is reclassified to a higher group, Cabinet may, by order in the *Gazette*, increase the tax holiday period so as to coincide with the maximum period allowable in the higher group to which the approved enterprise has been reclassified.

(5) The Minister shall, within a reasonable time after an appraisal under subsection (1), serve notice of his decision on the approved enterprise and inform the Comptroller of Inland Revenue.

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

20. Dividends not subject to time limit

(1) Dividends or other distribution from profits, or gains accruing to an approved enterprise as a result of the manufacture of an approved product during the tax holiday period (hereinafter referred to as the "dividends"), shall not be subject to any limitation as to the time within which the dividends are payable.

(2) Subject to subsection (3), the dividends, when paid to shareholders or their nominees (including a company or other corporate body), 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 tax as exceeds the tax liability of the shareholder in his country of residence.

21. Interest not to be exempt from income tax

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

22. Transfer of status of an approved enterprise

(1) Cabinet may, by order 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 reconstruction or restructuring of an enterprise; or
- (b) in its opinion it is equitable to do so or the public interest so requires.

(2) Prior to the issue of an order pursuant to subsection (1), Cabinet 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 undertaking and assurance as it may consider desirable having regard to the public interest.

(3) On the making of an order under subsection (1), all the rights, privileges, benefits, immunities, duties and obligations conferred or imposed by or under this Act on the former enterprise may be transferred to the latter enterprise in such manner, and to such extent, as may be specified in the order.

23. Effect of change of corporate name

(1) An approved enterprise shall not change its corporate name without the prior written approval of Cabinet.

(2) Cabinet may, by order 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.

24. Pioneer/development status not to be conferred under this Act

Save as provided in this Act, after the 13th August, 1982 —

- (a) Cabinet shall not confer on any industry, product, factory or manufacturer the benefit of pioneer/development status under any law; and
- (b) no manufacturing order shall be made or approved under the Aid to Pioneer Industries Act, 1952.

[Act No. 5 of 1952.]

25. Regulations

(1) Cabinet may make such regulations as it thinks necessary and expedient for giving effect to the provisions of the Act.

(2) Any regulations made under subsection (1) shall, as soon as may be, be laid before the House of Assembly and shall be subject to such modification as may be made by the House.

(3) Cabinet may give retrospective effect to a regulation if it is satisfied that it is equitable for such regulation to have retrospective effect in order to confer a benefit on, or to remove a disability from, an approved enterprise.

26. Saving

Notwithstanding the repeal of the Aid to Pioneer Industries Act, 1952—

- (a) in relation to every person in whose favour an order under section 4(1) of that Act has been made before the 13th August, 1983, declaring him to be a pioneer manufacturer of a pioneer industry specified therein, the provisions of that Act shall continue to apply as if that Act had not been repealed;
- (b) every application pending on the 13th August, 1982, shall be dealt with in accordance with the provision of this Act and the applicant shall be given a reasonable opportunity to amend his application if he so requests.

FIRST SCHEDULE

[Section 2]

Member States

Antigua
 Barbados
 Belize
 Dominica
 Grenada
 Guyana
 Jamaica
 Montserrat
 Saint Kitts/Nevis
 Saint Lucia
 Saint Vincent and the Grenadines
 Trinidad and Tobago
 Any other state of the Caribbean region that becomes a member of the Common Market.

SECOND SCHEDULE

[Section 16]

PART I

Exports to the Following Territories are not Eligible for Export Allowance

Antigua
 Barbados
 Belize
 Dominica
 Grenada

*Fiscal Incentives Act*SECOND SCHEDULE, PART 1- *continued*

Montserrat
 Saint Kitts/Nevis
 Saint Lucia.

PART 2

Method of Calculating Export Allowance

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

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

2. For the purposes of calculation—

- (a) export profits as a percentage of total profits shall be deemed to be export sales as a percentage of total sales;
- (b) profit attributable to 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 an enterprise for its year of income;
- (ii) "E" represents the proceeds of export sales (ex-factory) of the output of an Enterprise during its year of income;
- (iii) "S" represents the proceeds of all sales (ex-factory) of the output of an Enterprise during its year of income.

[Paragraph 2(b)(i) repealed and replaced by Act No. 16 of 1991.]

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 the year.

THIRD SCHEDULE

[Section 19.]

Tax Holiday Period

<i>Classification of approved enterprises</i>	<i>Tax holiday period</i>
Group	Years
Group I Enterprise	15
Group II Enterprise	12
Group III Enterprise	10
Enclave Enterprise	15

CHAPTER 468

**FISCAL INCENTIVES ACT
SUBSIDIARY LEGISLATION**

No Subsidiary Legislation
