



MONTSERRAT

CHAPTER 15.04

FISCAL INCENTIVES ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

FISCAL INCENTIVES ACT

Act 28 of 1975 .. in force 22 October 1975

Amended by Acts: 12 of 1977 .. in force 8 October 1977

9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

see also **Fiscal Incentives (Montserrat Composites Ltd) (Approved Enterprises)**

Order 2005 – Sections 5, 6 and 12

S.R.O. 58/2005 (footnote to sections 5, 6 and 12) .. in force 6 September 2005

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FISCAL INCENTIVES ACT
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CHAPTER 15.04

FISCAL INCENTIVES ACT

(Acts 28 of 1975, 12 of 1977 and 9 of 2011)

AN ACT TO GIVE EFFECT TO THE AGREEMENT ON HARMONISATION OF FISCAL INCENTIVES TO INDUSTRY.

Commencement

[22 October 1975]

PART 1

PRELIMINARY

Short title

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

Interpretation

2. In this Act—

“**approved product**” means a product declared by Order of the Governor acting on the advice of Cabinet under section 5 for manufacture by an approved enterprise; *(Amended by Act 9 of 2011)*

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

“**Common Market**” means 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 Montserrat and engaged or about to engage in an industry;

“**Group I Enterprise**” means an enterprise in respect of which the local value added is at least 50% of the amount realised from the sales of an approved product;

“**Group II Enterprise**” means an enterprise in respect of which the local value added is at least 25% but less than 50% of the amount realised from the sales of an approved product;

“Group III Enterprise” means an enterprise in respect of which the local value added is at least 10% but less than 25% of the amount realised from the sales of an approved product;

“industry” means a manufacturing or processing industry and includes deep sea fishing and shrimping where they form part of an integrated processing operation, but does not include Agriculture and Tourism;

“local value added” means the amount (expressed as a percentage of the total sales of an approved product) by which the amount realised from the sales of an approved product over a continuous period of 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 on 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; (*Amended by Act 9 of 2011*)

“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 an approved product exclusive of the cost of distribution;

“schedule” means a Schedule to this Act.

Computation 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—

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

(2) For the purposes of subsection (1), ‘V’ represents the local value added expressed as a percentage of the total sales of the approved product, and ‘W’ represents the wages and salaries paid to nationals of a Member State and expressed as a percentage of the total sales of the approved product.

Definitions

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

(2) For the purposes of paragraphs (iii) and (iv) of the definition of “local value added”, 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”).

(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.

PART 2

QUALIFICATIONS FOR INCENTIVES

Approved product

¹5. The Governor acting on the advice of Cabinet may by Order published in the *Gazette* declare a product for manufacture by an approved enterprise to be an approved product. (*Amended by Act 9 of 2011*)

Order declaring approved enterprise

²6. (1) The Governor acting on the advice of Cabinet on an application made by or on behalf of an enterprise, for the purpose of establishing an industry in Montserrat to manufacture an approved product, or, in the case of an enterprise that, at the commencement of this Act, is manufacturing a

¹ Products manufactured by Montserrat Composites Ltd declared approved products – S.R.O. 58/2005

² Montserrat Composites Ltd declared an approved enterprise and exempted from Income Tax for a period of ten years from the production day on profits arising from sale of any approved product – S.R.O. 58/2005

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 acting on the advice of Cabinet shall take into account—

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

(3) An Order made under subsection (1)—

- (a) shall specify the construction day, production day or both such days;
- (b) may declare that in its application it shall be restricted to a part of a factory, or to a particular grade, quality, description, type or classification of product;
- (c) may impose continuing obligations on the approved enterprise;
- (d) may confer certain benefits on the approved enterprise;*
- (e) may provide for its revocation in any case of breach of or non-compliance with its requirements.

(4) An application under subsection (1) shall be submitted in writing through the Minister and shall specify—

- (a) the locality or proposed locality of the factory in which the enterprise is manufacturing or intends to manufacture the approved product;
- (b) the construction day which shall not be later than 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 acting on the advice of Cabinet 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 acting on the advice of Cabinet to specify a production day;

* Under section 9 of the Stamp Act, the Legislative Assembly may by resolution exempt an approved enterprise from the obligation to pay stamp duty.

- (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.

(Amended by Act 9 of 2011)

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.

(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 section 19(3) or (4), if the Comptroller of Customs and Excise is satisfied that the plant, equipment, machinery, spare parts, raw materials or components thereof are or were required—

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

(3) Where, subsequent to the issue of a licence under subsection (1), there is a change in the circumstances contemplated by that subsection, the Minister shall—

- (a) revoke the licence; or
- (b) alter the licence so as to exclude any of the articles in respect of which the change exists.

(4) The provisions of this section shall not apply to an enclave enterprise.

Record and inspection of articles

8. (1) An approved enterprise which—

- (a) imports into Montserrat from an area outside the Common Market; or
- (b) purchases within the Common Market, any article in respect of which it has been granted exemption from customs duty by virtue of section 7(2) shall—

- (i) keep a record of the articles so imported or purchased in such form and containing such particulars as may be required by the Comptroller of Customs and Excise;
- (ii) cause the article to be marked with such mark and in such manner as may be required by the Comptroller of Customs and Excise; and
- (iii) permit the Comptroller of Customs and Excise, or any person authorised by him, 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 shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

Restriction on sale or other disposal of articles

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

- (a) to the transferee, in case of a transfer of the ownership of a factory belonging to the enterprise; or
- (b) where the approved enterprise pays or gives security to the satisfaction of the Comptroller of Customs and Excise for the payment of an amount equivalent to the amount of customs duty, which but for the provisions of section 7(2) would have been payable on importation of such article into Montserrat, where the article was so imported by the enterprise; or
- (c) after the expiration of five years from the date of the purchase of the article.

(2) An approved enterprise which contravenes any of the provisions of this section, shall be guilty of an offence and liable on summary conviction to a penalty equal to the value of the article, the disposal of which contravenes such provisions.

PART 3

INCENTIVES

Benefits may be granted to certain enterprises

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.

(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 acting on the advice of Cabinet may by Order published in the *Gazette* grant it any benefit for a period not exceeding that for which a benefit may be granted to an Enclave Enterprise in accordance with Schedule II. (*Amended by Act 9 of 2011*)

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

Exemption from income tax

³**12. (1)** The Governor acting on the advice of Cabinet may grant to an approved enterprise complete or partial exemption from the payment of income tax on the profits arising from the sale of an approved product from the production day for a period not exceeding the period specified in Schedule II (hereinafter referred to as “**the tax holiday period**”). (*Amended by Act 9 of 2011*)

(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

³ Montserrat Composites Ltd exempted from Income Tax for a period of ten years from the production day on profits arising from the sale of any approved product – S.R.O. 58/2005

which precedes the end of the tax holiday period shall be exempt from income tax.

Computation of profits

13. 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.

Deduction for capital expenditure

14. (1) During the tax holiday period the assets of an approved enterprise shall be depreciated by such amounts as are normally allowed under the Income and Corporation Tax Act for wear and tear.

(2) An allowance may be made not exceeding 20% of the capital expenditure incurred by the enterprise on plant, machinery and equipment after the expiration of the tax holiday period.

Set-off

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

(2) Notwithstanding the provisions of section 12 of the Income and Corporation Tax Act, on the expiration of the tax holiday period, the net losses incurred during that period, may be carried forward for the purpose of set-off in computing the profits of an approved enterprise for the five year period following the tax holiday period.

(3) Where the Order declaring an enterprise an approved enterprise is revoked by virtue of section 17(3), such an enterprise shall, for the purposes of carrying forward net losses incurred prior to the revocation of the Order, be deemed to be an approved enterprise.

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

Relief from tax on export profits

16. (1) Relief from income tax on the export-profits of an enterprise accruing from export of the approved product manufactured by it may be granted in accordance with this section only.

(2) Relief shall not be granted under this section—

- (a)* during the period the enterprise enjoys relief granted under sections 7 and 12;
- (b)* to an enterprise engaged in a traditionally export-oriented industry in respect of a product of that industry traditionally exported by Montserrat;

(c) in respect of export to a Member State:

Provided that—

- (i) relief may be granted for a period not exceeding five years next after the expiration of the tax holiday period in case of exports to Guyana, Jamaica and Trinidad and Tobago;
- (ii) relief may be granted during the period of five years from the 10 December, 1973, in respect of export to Guyana, Jamaica, Trinidad and Tobago by an enterprise to which no relief has been granted under sections 7 and 12.

(3) Relief shall be granted by way of tax credits only.

(4) Relief shall be granted if the export profits amount to 10% or more of the entire profit of the enterprise accruing from approved product and in accordance with the formula laid down in the Table below.

(5) Relief granted shall not exceed the percentage (being a percentage of the whole of the tax liability on the entire export-profits) specified in the Table below opposite the percentage of export-profits from the sale of the approved product—

TABLE

<i>Amount of export-profits expressed as a percentage of the entire profits from the sale of the approved product</i>	<i>Maximum percentage of tax relief</i>
10% or more but less than 21%	25%
21% or more but less than 41%	25%
41% or more but less than 61%	45%
61% or more	50%

(6) The following formula shall be used to ascertain export-profits for the purpose of this section—

$$\frac{\mathbf{E} \times \mathbf{P}}{\mathbf{S}}$$

Where: “E” represents the proceeds from export sales of the approved product for the year;

and “P” represents the profits made by the enterprise from all sales of the approved product for the year;

and “S” represents the proceeds of all sales for the year.

Delay in commencement of construction or manufacture

17. (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 Minister 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 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.

(2) Where an approved enterprise satisfies the requirements of subparagraph (ii), the Governor acting on the advice of Cabinet shall, by Order published in the *Gazette*, substitute for the construction day or production day as the case may be, some other specified day and thereupon the provisions of this Act shall take effect as if the day specified in such Order was the construction day or the production day as the case may be, specified in the Order made under section 6. (*Amended by Act 9 of 2011*)

(3) The Governor acting on the advice of Cabinet 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—

- (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 subsection (1).

(Amended by Act 9 of 2011)

(4) Subject to the provisions of section 15(3), 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 Duties and Consumption Tax Act or the Income and Corporation Tax Act, pay to the Comptroller of Customs and Excise and the Comptroller of Inland Revenue

any sums which, but for the provisions of section 7(2), and of section 12 would have been payable as customs duty or income tax.

(5) Notwithstanding the provisions of subsection (4), the Governor acting on the advice of Cabinet, 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. (*Amended by Act 9 of 2011*)

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

Restriction on use of factory

18. (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 acting on the advice of Cabinet, be used for purposes other than the manufacture of an approved product. (*Amended by Act 9 of 2011*)

(2) An enterprise which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$500 and in the case of a continuing offence to a further fine not exceeding \$250 in respect of each day during which the offence continues after conviction thereof.

(3) The provisions of this section shall not apply to an enterprise which ceases to be an approved enterprise and in respect of which all sums payable to the Comptroller of Customs and Excise and the Comptroller of Inland Revenue under the provisions of section 7(2) and of section 12 have been paid.

Performance of enterprise to be appraised

19. (1) The Minister shall—

- (a) at the expiration of three years from the production day; and
- (b) thereafter at intervals of two years, until the cessation of all benefits under this Act,

appraise the performance of an approved enterprise for the purpose of determining whether any change in its classification is necessary.

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

- (a) fails to maintain its classification or cannot be re-classified to any of the other Groups listed in Schedule II, that enterprise shall with effect from the date of the notice of the decision of the Minister under subsection (5), be no longer treated as an

approved enterprise for the purposes of section 7(2) and of section 12;

- (b) maintains its classification or is re-classified to any of the other Groups listed in Schedule II, that enterprise shall continue as an approved enterprise and the provisions of subsection (1)(b) shall continue to apply.

(3) Where as the result of the re-classification of an approved enterprise to a lower Group, the tax holiday period exceeds the maximum period allowable in that lower Group, the Governor acting on the advice of Cabinet shall, by Order published in the *Gazette* reduce the period to coincide with the maximum period allowable in the lower Group to which the approved enterprise has been re-classified. (*Amended by Act 9 of 2011*)

(4) Where an approved enterprise is re-classified to a higher Group, the Governor acting on the advice of Cabinet may, by Order published in the *Gazette*, increase the tax holiday period to coincide with the maximum period allowable in the Group in which the approved enterprise has been re-classified. (*Amended by Act 9 of 2011*)

(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.

Exemption from income tax

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

(2) Subject to subsection (3), the dividends when paid to shareholders or their nominees (including a company) shall be exempt from the payment of income tax.

(3) Where a shareholder is not resident in a Member State, the exemption referred to in subsection (2) shall apply to so much of the tax as exceeds the tax liability of the shareholder in his country of residence.

Interest not to be exempted from income tax

21. 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.

Transfer of status of approved enterprise

22. (1) The Minister may by notice published in the *Gazette*, transfer the status of an approved enterprise to another enterprise where—

- (a) an approved enterprise merges with or is taken over by another enterprise, or forms part of a company's reconstruction; or
- (b) in his 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 Ministry 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.

(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 change of corporate name

23. (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.

Regulations

24. (1) The Governor acting on the advice of Cabinet 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 a negative resolution of the Legislative Assembly.

(Amended by Act 9 of 2011)

Retrospective effect

25. (1) The Governor acting on the advice of Cabinet 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 an affirmative resolution of the Legislative Assembly.

(Amended by Act 9 of 2011)

SCHEDULE I

MEMBER STATES

- | | | |
|-----|----------|--------------------------|
| (a) | Antigua | Jamaica |
| | Barbados | Montserrat |
| | 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

TAX HOLIDAY PERIODS

Classification of Approved Enterprises	Tax Holiday Period
<i>Group</i>	<i>Years</i>
Group I Enterprise	fifteen
Group II Enterprise	twelve
Group III Enterprise	ten
Enclave Enterprise	fifteen
