

CHAPTER 107
FISCAL INCENTIVES ACT

• Act • Subsidiary Legislation •

ACT

Act No. 41 of 1974

Amended by

Act No. 14 of 1993

Act No. 14 of 1995

ARRANGEMENT OF SECTIONS

1.	Short title.
2.	Interpretation.
3.	Computation of local value added.
4.	Value of imported raw material to determine value of component.
5.	Approved product.
6.	Order declaring approved enterprise.
7.	Licence to import certain articles.
8.	Record and inspection of articles.
9.	Restriction on sale or other disposal of articles.
10.	Benefits may be granted to certain enterprises.
11.	Benefits for enterprise engaged in highly capital intensive industry.
12.	Exemption from income tax.
13.	Computation of profits.
14.	Deduction for capital expenditure.
15.	Set-off.
16.	Relief from income tax on export profits.
17.	Power of Minister in cases of delay in commencement of construction or manufacture.
18.	Restriction on use of factory.
19.	Performance of enterprise to be periodically appraised.
20.	Dividends not subject to time limit.
21.	Interest not to be exempted from income tax.
22.	Transfer of status of approved enterprise.
23.	Change of corporate name.
24.	Regulations.
25.	Retrospective effect.
First Schedule	Member States
Second Schedule	Tax Holiday Periods

CHAPTER 107
FISCAL INCENTIVES ACT

An Act to provide for fiscal incentives to industry.

[Act No. 41 of 1974 amended by Act No. 14 of 1993, Act No. 14 of 1995.]

[11th July, 1975.]

1. Short title

This Act may be cited as the Fiscal Incentives Act.

2. Interpretation

In this Act—

“approved enterprise” means an enterprise declared by Order under section 6;

“approved product” means a product declared by Order under section 5;

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

“Comptroller” means the Comptroller of Customs;

“construction day” means the day specified in an Order under section 6(1);

“enterprise” means a company incorporated under the Laws of Grenada and engaged or about to engage in industry;

“industry” means a manufacturing or processing industry (including data processing, deep-sea fishing and shrimping where they form part of an integrated processing operation but not including 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 for the sales of an approved product over a continuous period of twelve months, exceeds the aggregate amount of the following—

- (a) the value of imported raw materials, content of components and parts thereof, fuels and services;
- (b) wages or 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 or indirectly to persons (including companies) 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 (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;
- (e) depreciation on the imports of plant, machinery and equipment, or any of them;

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

“Minister” means the Minister for the time being responsible for industry;

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

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

“sale” means the proceeds of sale ex-factory of an approved product exclusive of the cost of distribution.

3. Computation of local value added

(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 under mentioned 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.

4. Value of imported raw material to determine value of component

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

(2) For the purposes of paragraphs (c) and (d) of that definition, a company shall be deemed to be non-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 or she owns or is entitled to purchase the greater part of the ordinary and paid up share capital (not including shares which carry no voting rights) of the company.

5. Approved product

The Minister may, by Order, declare a product to be an approved product for manufacture by an approved enterprise.

6. Order declaring approved enterprise

(1) The Minister on an application made by or on behalf of an enterprise for the purpose of establishing an industry in Grenada to manufacture an approved product may, if he or she is satisfied that it is in the public interest to do so, by Order, declare that enterprise to be an approved enterprise with effect from a date specified in the Order.

(2) In determining whether an Order should be made under subsection (1), the Minister shall take into account—

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

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

- (a) shall specify the construction day or 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; and
- (e) may provide for its revocation in the event of a contravention.

(4) An application under subsection (1) shall be made in writing 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 Minister 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 Minister to specify a production day;
- (d) the approved product already being, 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 certain articles

(1) The Minister may issue a licence to an approved enterprise to import from a country other than a Member State any articles of plant, machinery or equipment, or any component parts thereof, or any raw material for their manufacture, if he or she is satisfied that such articles, component parts or raw material are not available in sufficient quantity for export from any Member State or at a price, or of a quality, comparable with that of such a country.

(2) Upon receipt of a licence issued pursuant to subsection (1) an approved enterprise may import plant, machinery, equipment, component parts or raw material, as the case may be, free from customs duty, from a country other than a Member State for the period of relief specified in section 12 or 18(3), if the Comptroller of Customs is satisfied that the plant, machinery, equipment, component parts or raw material are, or were, required for the purpose of—

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

(3) Where, after 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 occurs.

(4) The provisions of this section shall not apply to an enclave enterprise as defined in section 10(1)(b).

8. Record and inspection of articles

(1) An approved enterprise which—

- (a) imports from a country other than one of the Member States; or
- (b) purchases from one of the Member States, any articles in respect of which it has freedom 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,
 - (ii) cause the articles to be marked with such mark and in such manner as may be required by the Comptroller of Customs, and
 - (iii) permit the Comptroller of Customs, or any person authorised by him or her, at all reasonable times to inspect such record and to have access to any factory or warehouse under its control for the purpose of examining any such article which the Comptroller of Customs has

reason to believe to be therein and of satisfying himself or herself of the accuracy of the particulars contained in the record.

(2) An approved enterprise which contravenes any of the provisions of this section is guilty of an offence and liable, on summary conviction, to a fine of three thousand dollars.

9. Restriction on sale or other disposal of articles

(1) An article purchased by an approved enterprise free of customs duty by virtue 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;
- (b) where the approved enterprise pays or gives security to the satisfaction of the Comptroller of Customs 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 that article into Grenada when the article was so imported by the enterprise; or
- (c) after the expiration of five years from the date of purchase of the article.

(2) An approved enterprise which contravenes this section is guilty of an offence and liable, on summary conviction, to a fine equal to the value of the article to which the contravention relates.

10. Benefits may be granted to certain enterprises

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

- (a) a Group I Enterprise, being an enterprise in respect of which the local value added is at least fifty per cent of the amount realised from the sales of an approved product;
a Group II Enterprise, being an enterprise in respect of which the local value added is at least twenty-five per cent but less than fifty per cent of the amount realised from the sales of an approved product;
a Group III Enterprise, being an enterprise in respect of which the local value added is at least ten per cent but less than twenty-five per cent of the amount realised from the sales of an approved product; or
- (b) an enclave enterprise, being an enterprise producing goods exclusively for export to countries other than the Member States.

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

11. Benefits for enterprise engaged in highly capital intensive industry

(1) Where an approved enterprise is engaged in a highly capital intensive industry, the Minister may, by Order, grant it any benefit for a period not exceeding fifteen years.

(2) In this section, “highly capital intensive” means having a capital investment of at least twenty-five million dollars.

12. Exemption from income tax

(1) The Minister may grant to an approved enterprise complete or partial exemption from the payment of income tax on profits arising from the sale of an approved product

from the production day for a period not exceeding the period specified in the Second Schedule (hereinafter referred to as “the tax holiday period”).

(2) Where the expiration of the tax holiday period does not coincide with the end of the accounting period of an approved enterprise, the income for the accounting period during which the last day of the tax holiday period falls shall be apportioned between the parts of the accounting periods which respectively precede and follow the end of the tax holiday period; the income thus apportioned to the part of the accounting period which precedes the end of the tax holiday period shall be exempt from income tax.

13. Computation of profits

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 expenditure

(1) During the tax holiday period the assets of an approved enterprise shall be depreciated by such amounts as are normally allowed for wear and tear under any law for the time being in force that makes provision for the taxation of income.

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

15. Set-off

(1) A 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 any written law relating to income tax, or other similar law, which makes provision for the granting of allowances for losses incurred in any trade, business, profession, or vocation, 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 any approved enterprise for the five year period following the tax holiday period.

(3) Where the Order declaring an approved enterprise is revoked by virtue of section 17(3), such an 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.

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

16. Relief from income tax on export profits

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

(2) Relief shall not be granted—

- (a) during the period the enterprise enjoys relief 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 from Grenada;
- (c) in respect of exportation to a Member State:

Provided that relief may be granted for a period not exceeding five years immediately following the expiration of the tax holiday period in the case of exports to Guyana, Jamaica and Trinidad and Tobago.

(3) Relief under this section shall be granted by way of tax credits.

(4) Relief shall be granted—

- (a) if the export profits amount to ten per cent or more of the entire profit of the enterprise accruing from sales of an approved product;
- (b) in accordance with the formula laid down in the Table appearing after subsection (5).

(5) Relief granted shall not exceed the maximum percentage (being a percentage of the whole of the tax liability on the entire export profits) specified in the following Table 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%	35%
41% or more but less than 61%	45%
61% or more	50%

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

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

- where: “E” represents the proceeds from export sales of the approved product for the year;
 “P” represents the profits made by the enterprise from all sales of the approved product for the year;
 “S” represents the proceeds of all sales for the year.

17. Power of Minister in cases of delay in commencement of construction or manufacture

(1) If an approved enterprise fails or neglects—

- (a) to commence construction of a factory on the construction day; or
- (b) to commence the manufacture of an approved product at such 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 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 that is or was beyond its control and that there is a reasonable prospect of commencing construction of the factory or manufacturing the approved product in marketable quantities, as the case may be, within such specified time as the Minister considers reasonable.

(2) Where an approved enterprise satisfies the requirements of subparagraph (ii) the Minister shall, by Order, substitute for the construction day or the production day, as the case may be, another specified day and thereupon the provisions of this Act shall take

effect as if the day specified in the Order was the construction day or the production day, as the case may be, specified in the Order made under section 6.

(3) The Minister may, having regard to all the circumstances of the case, if he or she thinks it expedient so to do, by Order, revoke an Order made pursuant to section 6 if an approved enterprise—

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

(4) Subject to the provisions of section 15(3), upon the 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 the enterprise shall, notwithstanding anything contained in the Customs (Control and Management) Act, Chapter 75B, or under any written law relating to income tax, pay to the Comptroller of Customs and to the Comptroller of Inland Revenue respectively any sums which, but for the provisions of sections 7(2) and 12 would have been payable as customs duty or income tax, as the case may be.

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

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

18. Restriction on use of factory

(1) Subject to the provisions of subsection (3), no factory which belongs to an enterprise and 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 publication of the Order declaring it to be an approved enterprise, without the prior approval of the Minister, be used for purposes other than the manufacture of an approved product.

(2) An enterprise which contravenes the provisions of subsection (1) is guilty of an offence and liable, on summary conviction, to a fine of one thousand five hundred dollars and in the case of a continuing offence to a further fine not exceeding seven hundred and fifty dollars 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 to the Comptroller of Inland Revenue under the provisions of sections 7(2) and 12 have been paid.

19. Performance of enterprise to be periodically appraised

(1) The Minister shall—

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

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

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

- (a) fails to maintain its classification or cannot be re-classified to any of the other Groups listed in the Second Schedule, that enterprise shall, with effect from the date of notice of the decision of the Minister under subsection (5), be no longer treated as an approved enterprise for the purposes of sections 7(2) and 12;

- (b) maintains its classification or is re-classified to any of the other Groups listed in the Second Schedule, 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 Minister shall, by Order, reduce the period to coincide with the maximum period allowable in the lower Group to which the approved enterprise has been re-classified.

(4) Where an approved enterprise is re-classified to a higher Group, the Minister may by Order increase the tax holiday period to coincide with the maximum period allowable in the Group to which the approved enterprise has been re-classified.

(5) The Minister, shall within a reasonable time after an appraisal pursuant to subsection (1), serve notice of his or her decision on the approved enterprise.

(6) The provisions of this section shall not apply to an industry having a capital investment of twenty-five million dollars or more.

20. Dividends not subject to time limit

(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 or her country of residence.

21. Interest not to be exempted from income tax

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

22. Transfer of status of approved enterprise

(1) The 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 or her opinion it is equitable or in the public interest to do so.

(2) Before the publication of a Notice pursuant to subsection (1), the Minister 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, in such form, as he or she may consider desirable having regard to the public interest.

(3) After the publication of a Notice pursuant to subsection (1), all the rights, privileges, benefits, immunities, duties and obligations conferred or imposed by or under this Act on the former enterprise may be transferred to the latter enterprise.

23. Change of corporate name

(1) Where an approved enterprise changes its corporate name, that enterprise shall within fourteen days of the date of such change notify the Minister in writing of its new corporate name.

(2) On receipt of such notification the Minister may, by Notice published in the *Gazette*, direct that any licences or documents issued to or in respect of that enterprise under or pursuant to the provisions of this Act, and specified in the Notice, be altered to indicate the new corporate name.

24. Regulations

(1) The Minister may make such regulations as he or she thinks necessary or expedient to give effect to the provisions of this Act.

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

25. Retrospective effect

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

(2) A regulation to which subsection (1) applies shall be subject to affirmative resolution.

First Schedule

FISCAL INCENTIVES ACT

Member States

[Section 2.]

- | | | |
|-----|--|--------------------------------|
| (a) | Antigua and Barbuda | Jamaica |
| | Barbados | Montserrat |
| | Belize | St. Christopher and Nevis |
| | Dominica | St. Lucia |
| | Grenada | St. Vincent and the Grenadines |
| | Guyana | Trinidad and Tobago |
| (b) | Any other member of the Caribbean Common Market. | |

Second Schedule

FISCAL INCENTIVES ACT

Tax Holiday Periods

[Sections 10(1) and 12(1).]

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

CHAPTER 107
FISCAL INCENTIVES ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Fiscal Incentives (Caribbean Agro-Industries Limited) Order
 2. Fiscal Incentives (Cereal and Processed Corn) Order
 3. Fiscal Incentives (Formula Feeds Complete and Concentrate for Animals) Order
 4. Fiscal Incentives (Flour and Flour Products) Order
-

Fiscal Incentives (Caribbean Agro-Industries Limited) Order

SRO 11 of 1978

ARRANGEMENT OF ORDERS

1. Citation.
 2. Approved enterprise.
 3. Construction day.
 4. Declaration of benefits.
-

FISCAL INCENTIVES (CARIBBEAN AGRO-INDUSTRIES LIMITED) ORDER

[Section 6. SRO 11 of 1978.]

[21st July, 1978.]

1. Citation

This Order may be cited as the Fiscal Incentives (Caribbean Agro-Industries Limited) Order.

2. Approved enterprise

It is hereby declared that for the purposes of the Act, Caribbean Agro-Industries Limited shall be an approved enterprise for the purpose of the manufacture of—

flour and flour products (including biscuits);
formula feeds complete and concentrate for animals and poultry;
cereals and processed corn.

3. Construction day

For the purposes of this Order, the construction day is 1st September, 1978.

4. Declaration of benefits

The declared benefits are the benefits of a Group I Enterprise.

Fiscal Incentives (Cereal and Processed Corn) Order

SRO 13 of 1978

ARRANGEMENT OF ORDERS

1. Citation.
 2. Declaration of approved product.
-

FISCAL INCENTIVES (CEREAL AND PROCESSED CORN) ORDER

[Section 5. SRO 13 of 1978.]

[21st July, 1978.]

1. Citation

This Order may be cited as the Fiscal Incentives (Cereal and Processed Corn) Order.

2. Declaration of approved product

The manufacture of cereals and processed corn by an approved enterprise is hereby declared to be approved products.

Fiscal Incentives (Formula Feeds Complete and Concentrate for Animals) Order

SRO 15 of 1978

ARRANGEMENT OF ORDERS

1. Citation.
 2. Declaration of approved product.
-

FISCAL INCENTIVES (FORMULA FEEDS COMPLETE AND CONCENTRATE FOR ANIMALS) ORDER

[Section 5. SRO 15 of 1978.]

[21st July, 1978.]

1. Citation

This Order may be cited as the Fiscal Incentives (Formula Feeds Complete and Concentrate for Animals) Order.

2. Declaration of approved product

The manufacture of formula feeds complete and concentrate for animals and poultry by an approved enterprise is hereby declared to be an approved product.

Fiscal Incentives (Flour and Flour Products) Order

SRO 16 of 1978

ARRANGEMENT OF ORDERS

1. Citation.
2. Declaration of approved product.

FISCAL INCENTIVES (FLOUR AND FLOUR PRODUCTS) ORDER

[Section 5. SRO 16 of 1978.]

[21st July, 1978.]

1. Citation

This Order may be cited as the Fiscal Incentives (Flour and Flour Products) Order.

2. Declaration of approved product

The manufacture of flour and flour products (including biscuits) by an approved enterprise is hereby declared to be approved products.