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CHAPTER 76

INDUSTRIAL INCENTIVES (FACTORY CONSTRUCTION)

An Act to encourage the building of factories for certain recognised industries and enterprises by the grant of tax and customs duty concessions and for matters incidental thereto. 1965-29.
L.N. 168/
1967.

[15th January, 1966] Commence-
ment.

1. This Act may be cited as the Industrial Incentives (Factory Construction) Act. Short title.

PART I

General

2. For the purposes of this Act, the expression—

“approved builder” means a company which holds a licence;

“approved product” means any product declared to be—

(a) an approved export product under section 3 of the Industrial Development (Export Industries) Act; or Cap. 74.

(b) an approved product under section 3 of the Industrial Incentives Act; or Cap. 75.

(c) a pioneer product under section 7 of the Pioneer Industries Act; Cap. 83.

“articles for factory construction” means any of the articles specified in the First Schedule; First
Schedule.

“company” means any company incorporated or registered under any Act in force in the Island, relating to the incorporation or registration of companies;

“Commissioner” means the Commissioner of Inland Revenue;

“Comptroller” means the Comptroller of Customs;

“factory”—

(a) means any premises in which or within the close or

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curtilage or precincts of which persons are or will be employed in any process for or incidental to—

(i) the manufacture or adaptation for sale of an approved product or of any other product which the Minister may in any particular case approve for the purposes of this Act;

(ii) the housing of machinery, plant or apparatus of any description for the manufacture of any product mentioned in sub-paragraph (i) of this definition or the generation of power for such manufacture,

being premises in which or within the close or curtilage or precincts of which, the work is or will be carried on by way of trade or for the purposes of gain and to or over which the manufacturer who employs or will employ the persons employed or to be employed therein has the right of access or control; and

(b) includes any machinery, plant, apparatus, appliances or other equipment installed in any premises mentioned in paragraph (a) of this definition;

“ licence ” means a licence granted under this Act and includes a licence transferred under section 5;

“ Minister ” means the Minister responsible for Industry;

“ recognised enterprise ” means—

Cap. 74. (a) an approved export manufacturer under the Industrial Development (Export Industries) Act; or

Cap. 75. (b) an approved enterprise under the Industrial Incentives Act; or

Cap. 83. (c) a pioneer manufacturer under the Pioneer Industries Act; or

(d) such other class of manufacturer as may be declared to be a recognised enterprise by the Minister by notice published in the *Official Gazette*;

“ relevant statutory period ” means the period commencing on the date determined by the Minister to be the date of completion of the construction of the relevant factory

by an approved builder and ending fifteen years after the first day of January next following such date of completion;

“ scheduled enactments ” means the enactments set out in the Second Schedule.

Second
Schedule.

3. (1) Where a company is granted a licence to construct a factory under this Act, then, subject to this Act, and notwithstanding anything to the contrary contained in any of the scheduled enactments, that company may construct a factory for a recognised enterprise.

Power of
approved
builder to
construct
factory.

(2) Where pursuant to this Act a factory is being constructed by an approved builder, such construction shall, subject to this Act, be carried out as if it were being carried out by a recognised enterprise and, subject as aforesaid, the relevant scheduled enactment shall apply to the construction of the factory as they would have applied if such construction were being carried out by a recognised enterprise.

(3) For the purposes of this section a reference to “ construct ” includes a reference to “ construct and equip ” and references to “ construction ” shall be construed accordingly.

4. (1) The Minister may grant a licence to a company to construct or to construct and equip a factory under this Act if he is satisfied that the company is able to finance the construction and equipment of the factory.

Power of
Minister to
grant or
revoke
licences.

(2) Every licence shall be subject to such conditions as the Minister in his discretion may specify therein, so, however, that the licence shall as a condition require the company to retain ownership of the factory during the relevant statutory period.

(3) Notwithstanding subsection (2), the Minister may at any time during the relevant statutory period permit a company to which a licence is granted—

- (a) to sell the factory to a recognised enterprise; or
- (b) to sell the factory to a company, to which upon the sale being effected subsection (1) of section 5 shall apply; or

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(c) to sell the factory subject to such terms as he may specify to some person other than a recognised enterprise or a company referred to in paragraph (b) of this subsection, but there shall be no such sale of the factory until the Minister is satisfied that the sale thereof under paragraph (a) or paragraph (b) of this subsection cannot be effected.

(4) Where it appears to the Minister that a company holding a licence has contravened any of the conditions specified in that licence or any of the provisions of this Act or of regulations, he shall serve upon the company a notice requiring it, within such reasonable time not being less than fourteen days as may be specified in the notice, to do all such things as will make good to the satisfaction of the Minister any default or deficiency arising by way of the contravention.

(5) If a company fails to comply with a notice served under subsection (4), then, after the expiration of the time specified in the notice, the Minister may revoke the licence of the company, in which event—

(a) the company shall pay—

(i) to the Commissioner, a sum equal to such concession as respects income tax; and

(ii) to the Comptroller, a sum equal to such concessions as respects customs duty and package tax,

as, pursuant to this Act, it has received since the date of the receipt by the company of the notice aforesaid; and in addition thereto;

(b) if the contravention is the sale of the factory (whether the factory has been completed or not) otherwise than in accordance with subsection (3), the company shall pay to the Comptroller a sum which bears the same proportion to the total amount of the customs duty and package tax from which the company was exempted or which were refunded or paid to the company in respect of that factory as the unexpired portion of the relevant statutory period at the date of the receipt of the notice by the company bears to the whole relevant statutory period.

5. (1) Subject to subsection (2), where by virtue of subsection (3) of section 4 the factory to which a licence relates is sold by the company holding the licence, then, from the date of the sale and in place of the company—

Transfer of rights and obligations on sale of factory.

- (a) the purchaser shall be deemed to be the approved builder with respect to the factory, and the licence granted by the Minister under subsection (1) of section 4 shall accordingly be transferred to the purchaser in the prescribed manner; and
 - (b) the purchaser, as respects matters arising after the sale, is entitled to hold all rights and privileges conferred, and is subject to all the obligations and liabilities imposed, upon the approved builder by the provisions of the licence and by this Act and by regulations.
- (2) Subsection (1) shall not have effect where the purchaser—
- (a) is not a company; or
 - (b) is a recognised enterprise; or
 - (c) is a manufacturer acquiring the factory for use in his business,

and in that event this Act shall cease to apply to the factory after the sale except as respects any terms which the Minister may, in accordance with paragraph (c) of subsection (3) of section 4, have specified in relation to the sale.

6. All applications for the grant of a licence shall be addressed to the Minister and be in such form and contain such particulars as the Minister may from time to time determine.

Applications for licence.

PART II

Provisions relating to Customs Duty and Package Tax

7. (1) Subject to subsection (2), an approved builder is entitled upon the production of its licence to the Comptroller to import into the Island in accordance with the terms thereof free of all customs duty and package tax articles for factory construction, if the approved builder satisfies the Comptroller

Free entry of articles for factory construction and equipment.

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that the articles are to be imported by it for the purposes of—

- (a) constructing, altering, reconstructing or extending the factory in respect of which the licence was granted; or
- (b) equipping such factory or any extension thereof for the manufacture or sale of an approved product; or
- (c) effecting repairs to such factory or to any extension thereof; or
- (d) effecting repairs to or replacing any apparatus, machinery, plant, appliances or other equipment installed in such factory or in any extension thereof.

(2) Where any article for factory construction is being manufactured in the Island in such quantity that, in the opinion of the Minister, an adequate supply of that article is available for purchase in the Island, the Minister may from time to time by notice published in the *Official Gazette* declare that the exemptions from customs duty and package tax granted by subsection (1) shall not apply to that article and, thereafter, those exemptions shall cease to apply.

Refund of
customs duty
and package
tax on
certain
imported
articles.

8. (1) Subject to subsection (2), where a company has, at any time within one year before it is granted a licence as an approved builder, imported into the Island any article for factory construction, the Comptroller, if satisfied that the article was at that time imported for any of the purposes mentioned in subsection (1) of section 7, shall on the application of the approved builder refund to it the customs duty and package tax paid by it on the importation of the article.

(2) No refund of customs duty or package tax shall be given to an approved builder by or on behalf of which an application is made pursuant to subsection (1) if the article in respect of which the application is made is an article—

- (a) to which by virtue of a declaration made pursuant to subsection (2) of section 7 the exemptions from customs duty and package tax granted by subsection (1) of that section do not apply;
- (b) which was imported into the Island by the said approved builder after the date of the publication in the *Official*

Gazette of the notice by which the said declaration was made.

9. (1) Where an approved builder purchases within the Island any article for factory construction for any of the purposes mentioned in subsection (1) of section 7, that approved builder may in writing apply to the Comptroller for the payment to it of the customs duty and package tax paid on the importation of such article.

Payment to approved builder of customs duty and package tax on articles purchased within the Island.

(2) Every application made under subsection (1) shall state—

- (a) the country from which the article in respect of which such application was made was imported into the Island;
- (b) the date of the importation of such article into the Island;
- (c) the amount of customs duty and package tax paid on the importation of such article; and
- (d) such other particulars as may be prescribed.

(3) Where on an application made pursuant to subsections (1) and (2) the Comptroller is satisfied that—

- (a) the article in respect of which such application is made—
 - (i) was purchased for any of the purposes mentioned in subsection (1) of section 7;
 - (ii) is an article with respect to which no declaration made pursuant to subsection (2) of section 7 is in force or, if it is an article with respect to which such a declaration is in force, that it was purchased in the Island by the said approved builder at a date before the publication in the *Official Gazette* of the notice by which the said declaration was made;
- (b) the customs duty or package tax was paid on the importation into the Island of the article;
- (c) the application made in respect of the article was made within one year of the date of the importation into the Island of the article; and

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- (d) if the application is accepted, the amount to be paid to the approved builder exceeds five dollars,

the Comptroller shall issue an order authorising the payment to the approved builder of the amount of the customs duty and package tax paid on the importation of the article and upon such order being issued the approved builder is entitled to be paid out of the Consolidated Fund the amount stated in the order.

Restriction on disposal of articles for factory construction relieved of customs duty and package tax, etc.

10. (1) No article for factory construction which is imported into the Island by or on behalf of an approved builder free of customs duty or package tax pursuant to section 7, or in respect of which a refund of customs duty or package tax was given or an order was issued under section 8 or section 9, as the case may be, shall, at any time within the relevant statutory period, be sold, exchanged, given away or otherwise disposed of in the Island by the approved builder by which such article was imported or purchased unless—

- (a) the approved builder pays to the Comptroller or gives security to the satisfaction of the Comptroller for the payment of an amount equal to the amount of customs duty and package tax unpaid by or refunded or paid to the said approved builder, as the case may be; or
- (b) the Minister is satisfied that such article is not, or is no longer, required for the purpose for which it was imported or purchased and grants a permit to the approved builder to dispose of such article in such manner and subject to such terms and conditions as the Minister thinks fit.

(2) The Minister may, as a condition for the grant of a permit under paragraph (b) of subsection (1), require that there shall be paid to the Comptroller all the sums or, in his discretion, any part of such sums, which pursuant to this Part have not been paid or have been refunded by way of customs duty or package tax on the importation or purchase, as the case may be, of any such article for factory construction.

(3) Any approved builder who otherwise than in accordance with subsection (1) sells or gives away in the Island or therein

otherwise disposes of any article for factory construction—

- (a) which pursuant to subsection (1) of section 7 was imported into the Island free of customs duty by or on behalf of that approved builder; or
- (b) in respect of which a refund was given pursuant to section 8 or a payment was made pursuant to section 9 to that approved builder,

is guilty of an offence and is liable on conviction thereof by a court of summary jurisdiction to a fine of three times the value of such article at the date of its importation or purchase, as the case may be.

11. (1) No article for factory construction which is imported into the Island by or on behalf of an approved builder free of customs duty or package tax pursuant to subsection (1) of section 7, or in respect of which a refund of customs duty or package tax was given or an order was issued under section 8 or 9, as the case may be, shall, without the prior written approval of the Minister, be used at any time within the relevant statutory period for any purpose other than a purpose mentioned in subsection (1) of section 7.

Restriction on use of certain articles for factory construction.

(2) The Minister may, as a condition for the grant of any approval pursuant to subsection (1), require that there shall be paid to the Comptroller all the sums or, in his discretion, any part of such sums which pursuant to this Part have not been paid or have been refunded or paid by way of customs duty or package tax on the importation or purchase, as the case may be, of any such article for factory construction.

(3) Any person who uses any article for factory construction in contravention of subsection (1) is guilty of an offence and liable on conviction thereof by a court of summary jurisdiction to a fine of five hundred dollars and in the case of a continuing offence to a further fine of two hundred and fifty dollars for each day during which the offence continues.

PART III

Provisions relating to Income Tax

12. (1) Notwithstanding anything contained in the Income Tax Act, there shall be exempt from income tax all profits or

Exemption from income tax.
Cap. 73.

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gains arising or accruing to an approved builder during the relevant statutory period from the lease or other letting of any factory constructed by such builder pursuant to this Act.

(2) Notwithstanding section 10 of the Income Tax Act, interest payable by an approved builder on any debenture the holder of which is, under section 15, exempt from the payment of income tax in respect thereof, shall not be allowed as a deduction in calculating the profits or gains of that approved builder for the purposes of subsection (1).

Notional
depreciation
of machinery
and plant.

13. (1) In the second year of the relevant statutory period and in every year thereafter up to and including the year next following the year in which that period ends, any machinery or plant—

- (a) which belongs to an approved builder; and
- (b) which is installed and is in use in any factory from the lease or other letting of which during the relevant statutory period the profits or gains arising or accruing to the approved builder during that period are exempt from income tax,

shall be notionally depreciated in value at a rate equivalent to that at which an annual allowance would have been made in respect of such machinery or plant had such profits or gains not been exempt from income tax.

(2) In calculating the amount of any annual allowances which may be made pursuant to the Income Tax Act—

- (a) in any year of assessment after the year next following the end of the relevant statutory period; and
- (b) in respect of any machinery or plant notionally depreciated in value pursuant to subsection (1); and
- (c) to the approved builder to which such machinery or plant belonged during the said period,

there shall be deducted from the capital expenditure incurred by such approved builder on the provision of such machinery or plant an amount equal to the notional depreciation so calculated in respect of such machinery or plant as well as any other amount to be deducted pursuant to the Income Tax Act.

(3) Subject to subsection (5), in calculating the amount of any balancing allowance or balancing charge which may be made pursuant to the Income Tax Act—

- (a) in any year of assessment after the year next following the end of the relevant statutory period; and
- (b) in respect of the capital expenditure incurred on the provision of any machinery or plant notionally depreciated in value pursuant to subsection (1); and
- (c) to or on the approved builder to which such machinery or plant belonged during the same period,

there shall be added to any annual allowances previously made pursuant to the Income Tax Act to the approved builder in respect of such machinery or plant an amount equal to the notional depreciation so calculated as well as any other amounts to be taken into account pursuant to the Income Tax Act.

(4) Subject to subsection (5), where no such annual allowances as are referred to in subsection (3) have previously been made, the amount equal to the notional depreciation calculated pursuant to subsection (1) shall, for the purposes of the Income Tax Act, be deemed to be the total annual allowances made to the approved builder in respect of the said machinery or plant.

(5) In no case shall the amount on which a balancing charge is made on an approved builder in respect of any machinery or plant notionally depreciated in value pursuant to subsection (1) exceed the aggregate of—

- (a) the amount equal to the notional depreciation so calculated in respect of the machinery or plant in question;
- (b) the amount of any annual allowances made pursuant to the Income Tax Act to the approved builder in respect of the machinery or plant in question;
- (c) the amount of any balancing allowance previously given pursuant to the Income Tax Act to the approved builder in respect of the capital expenditure incurred by it on the provision of the machinery or plant in question.

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(6) Any reference in this Part to annual allowances, a balancing allowance or balancing charge in respect of machinery or plant shall be deemed to include a reference to annual allowances, a balancing allowance or balancing charge in respect of industrial buildings or structures as defined in subsection (4) of section 84 of the Income Tax Act, and in relation to any allowance or charge so included, any reference in this Part to machinery or plant shall be read and construed as a reference to industrial buildings and structures as so defined.

Maintenance of separate accounts for tax free profits and gains and charging thereto of certain dividends free of income tax.

14. (1) During the relevant statutory period an approved builder shall credit to a separate account all profits or gains which the Commissioner is satisfied have been exempted from income tax in accordance with section 12, and if an approved builder intends to pay a dividend to its shareholders out of such profits or gains, such dividend shall be charged to such account.

(2) Subject to subsection (3), a shareholder to whom a dividend is paid pursuant to subsection (1) shall, notwithstanding anything contained in the Income Tax Act, be exempt from any income tax payable by him in respect thereof—

- (a) if he is resident in the Island; or
- (b) if not so resident, if he is not liable under the law of the country in which he is resident to pay in respect of such dividend a tax (by whatever name called) corresponding to income tax; and
- (c) if the dividend is paid at any time within two years after the expiration of the relevant statutory period.

(3) The exemption from income tax granted by subsection (2) shall not exceed the amount of income tax which, but for this Part, would have been payable by the approved builder on the profits or gains out of which a dividend was paid by such approved builder pursuant to subsection (1), and any amount of income tax in excess of the amount first mentioned shall be paid by the shareholder.

15. (1) Subject to subsection (2), any person holding debenture stock in any company declared under this Act to be an approved builder to whom any interest is paid thereon by such approved builder shall, notwithstanding anything contained in the Income Tax Act, be exempt from the payment of any income tax on such interest—

Exemption from income tax on interest paid on certain debenture stock.

- (a) if he is resident in the Island; or
- (b) if not so resident, if he is not liable under the law of the country in which he is resident to pay in respect of such interest a tax (by whatever name called) corresponding to income tax; and
- (c) if the interest is paid by the approved builder in respect of the relevant statutory period.

(2) The exemption from income tax granted by subsection(1) shall not exceed the amount of income tax which, but for this Part, would have been payable by the approved builder on any profits or gains arising or accruing to such approved builder and derived from the lease or other letting of a factory, and any amount of income tax in excess of the amount first mentioned shall be paid by the stockholder.

16. Save as is expressly provided by this Part, the provisions of this Part shall not, in any respect other than as so expressly provided, affect the provisions of the Income Tax Act or the application thereof.

Application of Income Tax Act. Cap. 73.

PART IV

Miscellaneous

17. (1) Subject to section 18, a factory constructed by an approved builder under this Act shall not, without the prior approval of the Minister, be used at any time during the relevant statutory period for any purposes other than those of a recognised enterprise.

Restriction of use of factory.

(2) The grant by the Minister of approval under subsection (1) shall be subject to such written conditions as the Minister may in any particular circumstances think necessary.

(3) A person who uses any such factory in contravention of

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subsection (1) is guilty of an offence and on conviction thereof by a court of summary jurisdiction is liable to a fine of one thousand dollars and in default of payment to imprisonment for a term of twelve months and in the case of a continuing offence to a further fine of one hundred dollars in respect of each day during which the offence continues.

Power to
grant new
lease of
factory.

18. (1) Where pursuant to this Act a factory has been constructed by an approved builder and—

- (a) the approved builder has been unable within ninety days of the date of completion of such construction to obtain agreement with a recognised enterprise for the lease or letting of the factory; or
- (b) the recognised enterprise for which the factory was constructed fails to occupy the factory in breach of an agreement to do so; or
- (c) the factory becomes vacant in any circumstances which, in the opinion of the Minister, were beyond the control of the approved builder,

then the approved builder is, subject to subsections (2) and (3) and to such conditions as may be specified by the Minister, entitled during the relevant statutory period to grant a lease or other letting of the factory to a person or company other than a recognised enterprise.

(2) The approved builder is not entitled to lease or otherwise let the factory as provided in subsection (1) unless—

- (a) immediately upon the happening of any of the events mentioned in paragraphs (a), (b) and (c) of subsection (1) or upon the factory otherwise becoming vacant the approved builder endeavours to seek agreement with some other recognised enterprise for a new lease or other letting of the factory and upon failure to secure such an agreement within ninety days it notifies the Minister accordingly; and
- (b) the Minister is unable within thirty days of such notification to propose a recognised enterprise willing to accept a lease of the factory upon terms acceptable to the approved builder.

(3) Where an approved builder is unable to obtain agreement with a recognised enterprise for a lease or other letting of the whole factory pursuant to paragraph (a) of subsection (2), that approved builder may, with the approval of the Minister, enter into an agreement with such recognised enterprise for a lease of a portion of the factory, so, however, that the Minister may in respect of that portion of the factory which is not subject to the agreement require the approved builder to fulfil such special conditions (whether similar to the provisions of subsection (2) or not) in relation to the lease or other letting thereof as he may think fit.

19. (1) The Minister may make regulations with regard to— Regulations.
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1967.

- (a) any matters required by this Act to be prescribed;
- (b) the particulars to be furnished and the requirements to be fulfilled by a company applying for a licence;
- (c) any matter or thing connected with the construction under this Act of a factory and its use by a recognised enterprise or other occupier;
- (d) any other matter or thing (whether similar to the foregoing or not) in respect of which it appears to the Minister to be expedient to make regulations for the purpose of carrying this Act into effect.

(2) Any regulations made under subsection (1) may provide in respect of the breach of any of the provisions thereof that the offender shall be liable to a fine not exceeding one thousand dollars or to such term of imprisonment not exceeding twelve months or to both such fine and imprisonment as may be therein prescribed.

FIRST SCHEDULE

s. 2.

All building materials, tools, plant, machinery, pipes, pumps, locomotives, conveyor belts or other appliances and materials necessary for and used in the construction or equipment of the factory for the purposes of the manufacture of an approved product.

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SECOND SCHEDULE

- Cap. 74. Industrial Development (Export Industries) Act.
- Cap. 75. Industrial Incentives Act.
- Cap. 83. Pioneer Industries Act.