

The Hotel (Incentive) Act

[21 March 1968]

Regulation. | Cases

ARRANGEMENT OF SECTIONS

Acts 16 of 1968 | 30 of 1971 | 23 of 1972 S. 3 (2) (b) | 12 of 1985 Sch. | 17 of 1986 | 16 of 1991 S. 64

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1. Short title.

1 This Act may be cited as the Hotels (Incentives) Act.

2. Interpretation.

2. (1) In this Act unless the context otherwise requires -

"annual allowances", "chargeable income", "initial allowance" and "year of assessment" have the same meanings as in the Income Tax Act, and where pursuant to this Act any annual allowance is made, such allowance shall be made subject to and in accordance with the provisions of that Act;

"approved extension" means an extension or other alteration approved by the Minister pursuant to section 4;

"approved hotel enterprise" means a hotel enterprise approved by the Minister pursuant to section 3;

"company" means -

- (a) any company incorporated or registered under any law in force in Jamaica; or
- (b) any company which, though incorporated or registered outside Jamaica carries on business or has an office or place of business therein; or
- (c) any other body approved as such by the Minister by notice published in the *Gazette* for the purposes of this Act;

"convention type hotel" means a hotel containing an aggregate number of not less than three hundred and fifty bedrooms and facilities for the holding of conferences and in relation to which an order made under section 3 is in force;

"hotel" means any building, or group of buildings within the same precinct containing or intended to contain when complete an aggregate number of not less than ten bedrooms and facilities for meals for the accommodation of transient guests, including tourists, for reward, together with the precinct thereof and all other buildings and structures within such precinct;

"hotel enterprise" means the business concerned with the establishment or operation of a hotel;

"precinct" means the area of land within which the buildings and structures comprising a hotel or an extension to a hotel are constructed or intended to be constructed, designated on any plan or drawing referred to in section 5;

"relevant concession period" means, in relation to any approved hotel enterprise or any approved extension, the number of years, commencing on the specified date, in respect of which the benefits of section 9 may be enjoyed;

"specified date" means, in relation to any approved hotel enterprise or any approved extension, the date specified for the commencement of the operation of such approved hotel enterprise or such approved extension, as the case may be, in the relevant order made under section 3 or section 4, as the case may be.

(2) The fact that an area of land designated in any plan or drawing referred to in section 5 is divided into two or more segments by a public highway, street, road, pathway, gully, river, stream or such other physical divisions shall not preclude the segments being regarded by the Minister as being within one and the same precinct for the purposes of this Act.

3. Declaration of approved hotel enterprise.

3. (1) Subject to the provisions of section 6 the Minister may by order declare any hotel enterprise, whether the hotel is in existence at the date on which such order comes into force or is proposed to be established thereafter, to be an approved hotel enterprise for the purpose of this Act.

(2) The Minister shall not make an order under this section unless he is satisfied that the hotel enterprise to which the order is proposed to apply is, or is likely to be, a successful enterprise as respects-

(a) the manner in which it is being, or is proposed to be operated; and

(b) the availability of adequate finances for its operation and maintenance; and the economic effects, including the effects on the tourist trade, of its operations.

(3) Every order made under this section may include such terms and conditions as the Minister may think fit and shall specify a date, which shall be the date on which the operation of the hotel shall commence or be deemed to commence and from which the benefits of section 9 may be enjoyed in relation to the hotel to which the order is proposed to apply, and such date may be earlier than the date of the coming into force of the order but shall not be earlier than the 1st day of April, 1965.

(4) Subject to the provisions of section 6 every approved hotel enterprise shall cease to be an approved hotel enterprise at the expiration of the relevant concession period.

4. Declaration of approved extension.

4. (1) Where any extension, or any other alteration which increases or improves the accommodation or the amenities of any hotel is made or is proposed to be made to that hotel the Minister may, subject to the provisions of this section and section 6, by order declare such extension or other alteration to be an approved extension for the purposes of this Act.

(2) The Minister shall not make an order under this section unless he considers that the conditions specified in subsection (2) of section 3 will be satisfied as respects the hotel and that-

(a) in the case of an extension or other alteration which increases the number of bedrooms in the hotel the increase will not, unless the requirements of paragraph (b) are satisfied, be less than ten bedrooms or thirty per cent of the number of bedrooms existing before the increase, whichever is the greater; or

(b) the extension or other alteration intended to provide improved accommodation and other amenities will entail substantial structural alterations to the hotel.

(3) Every order made under this section may include such terms and conditions as the Minister may think fit and shall specify a date, which shall be the date on which the operation of the approved extension shall commence or be deemed to commence and from which the benefits of section 9 may be enjoyed in relation to the extension or alteration to which the order is proposed to apply, and such date may be earlier than the date of the coming into force of the order but shall not be earlier than the 1st day of April, 1965.

(4) Subject to the provisions of section 6 every approved extension shall cease to be an approved extension at the expiration of the relevant concession period.

5. Applications for approval.

5. Every application for the declaration of any hotel enterprise as an approved hotel enterprise or of any extension or other alteration of any hotel as an approved extension shall -

(a) be made in such form as may be approved by the Minister; and

(b) contain such information, and be accompanied by such plans, specifications, drawings, reports and other documents, as may be prescribed.

6. Amendment or revocation of orders under section 3 or 4.

6. (1) Where a person to whom this subsection applies so requests the Minister may amend the relevant order made under section 3 or section 4, as the case may be, in respect of the specified date and any terms and conditions contained in such order.

(2) Subsection (1) applies to a person by whom or on whose behalf application was made for the declaration of a hotel enterprise as an approved hotel enterprise or for the declaration of any extension or other alteration of any hotel as an approved extension.

(3) Where the Minister is satisfied that as respects any hotel or hotel enterprise in relation to which an order under section 3 or section 4 applies there is failure to commence the construction or operation of the hotel or approved extension, as the case may be, in accordance with the proposals contained in the application for the declaration of the hotel enterprise as an approved hotel enterprise or for the declaration of any extension or other alteration as an approved extension or with the order made under section 3 or section 4, as the case may be, he may, by notice in writing, require the person by whom such application was made to establish to the satisfaction of the Minister within such period as the notice shall specify that such failure is due to circumstances beyond the control of such person and that there is a reasonable prospect of commencing the construction or operation of such hotel or such approved extension within a reasonable time. If the Minister does not receive, within the period referred to in this subsection, information which is satisfactory to him he may, if he thinks it expedient so to do, amend or revoke the order by which the hotel enterprise was declared to be an approved hotel enterprise or the extension or other alteration was declared to be an approved extension, as the case may require.

(4) Where the Minister is satisfied that as respects any hotel or hotel enterprise in relation to which an order made under section 3 or section 4 applies any representations made in or in connection with the application for approval of the hotel enterprise as an approved hotel enterprise or for approval of any extension or other alteration of the hotel as an approved extension, as the case may be, were false in any material particular or were made with intent to deceive or were otherwise not made in good faith and that such representations substantially influenced the decision to declare the hotel enterprise to be an approved hotel enterprise or the extension or other alteration to be an approved extension he may by notice in writing, require the person by whom such application was made to show cause to the satisfaction of the Minister within such period as the notice shall specify why the order by which the hotel enterprise was declared to be an approved

hotel enterprise or the extension or other alteration was declared to be an approved extension, as the case may require, should not be amended or revoked, and if such person fails to show cause accordingly, the Minister may, if he thinks it expedient so to do, amend or revoke the order by which the hotel enterprise was declared to be an approved hotel enterprise or the extension or other alteration was declared to be an approved extension, as the case may require.

(5) Where the Minister is satisfied that any hotel in relation to which an order made under section 3 or section 4 applies has ceased to be a hotel during the relevant concession period he shall revoke such order.

7. The relevant concession period.

7. (1) Subject to the provisions of this section the relevant concession period shall, as respects an approved hotel enterprise or an approved extension of any hotel, be ten years.

(2) The Minister may by order declare to be a special development area for the purposes of this Act any area defined in such order.

(3) It shall be lawful for the Minister by order made under subsection (2) to specify the relevant concession period, being not less than eleven nor more than fifteen years, in respect of an approved hotel enterprise or an approved extension of a hotel in a special development area defined in such order.

(4) No amendment of an order made under subsection (2) which reduces the number of years specified in such order shall apply in relation to any hotel enterprise or any extension of a hotel which was declared to be an approved hotel enterprise or an approved extension of a hotel, as the case may be, before such amendment came into force.

(5) The Minister may by order declare that the relevant concession period in respect of an approved hotel enterprise relating to a convention type hotel specified in such order shall be fifteen years.

8. Persons entitled to benefits.

8. The benefits of sections 9 and 11 shall be enjoyed by -

(a) any company which is for the time being the owner or tenant of the premises comprising any hotel in relation to which an order under section 3 or under section 4 has been made, whether or not such company is the operator or is entitled to receive any profits arising from the operation of such hotel; and

(b) any company which, not being the owner of such hotel, operates it in accordance with an agreement made between itself and the owner or tenant and certified by the Minister to be acceptable for the purposes of this Act:

Provided that a company which is approved, recognized or declared for the purpose of any of the enactments specified in the First Schedule shall not be entitled to such benefits.

9. Income tax benefits.

9. (1) Any company to which section 8 applies shall be entitled to relief from income tax in respect of profits or gains arising or accruing during the relevant concession period, from the approved hotel enterprise, of an approved extension of any hotel, of which it is the owner, tenant or operator.

(2) Notwithstanding anything in the law relating to income tax initial allowances shall not be made in respect of assets acquired, in relation to an approved hotel enterprise or an approved extension of any hotel, prior to or during the relevant concession period.

(3) During the relevant concession period annual allowances shall not be made.

(4) After the expiration of the relevant concession period annual allowances may be made upon the original cost of the assets less the allowances, if any, made before the beginning of the relevant concession period.

(5) Any company which enjoys relief from income tax by virtue of the provisions of subsection (1) may, for the purpose of the assessment of income tax, carry forward in respect of the first six years of assessment after the expiration of the relevant concession period, losses which were incurred during the relevant concession period and were not written off, so, however, that the annual allowances referred to in subsection (4) of this section and the amount of any loss admitted under paragraph (h) of section 13 of the Income Tax Act, shall be taken into account.

(6) For the purposes of this section the profits or gains arising or accruing from or the losses incurred in relation to or the value of any approved extension shall be determined in such manner as may be prescribed.

10. Dividends.

10. (1) Every company which is entitled under section 9 to relief from income tax in respect of profits or gains arising or accruing from an approved hotel enterprise or an approved extension shall place in a separate account all such profits or gains and where such company intends to pay a dividend to its shareholders out of such profits or gains, such dividend shall be paid out of such account.

(2) Unless, pursuant to the first proviso to section 37 of the Income Tax Act, the Commissioner of Income Tax otherwise authorizes, income tax shall be deducted by a company which pays any dividend to its shareholders out of profits or gains relieved from income tax by virtue of the provisions of section 9 of this Act as if such dividend had been paid out of profits or gains within the meaning of the law relating to income tax as regards the deduction of tax by a company on the payment of a dividend by that company.

(3) A company making deduction of income tax pursuant to subsection (2) shall be deemed to be collecting income tax on behalf of the Commissioner of Inland Revenue and shall pay to him or to such other person as he may direct the amounts so deducted.

(4) A shareholder to whom any dividend is paid out of profits or gains relieved from income tax by virtue of the provisions of section 9 shall be exempt from income tax in respect of such dividend -

(a) if he is resident in Jamaica; or

(b) if he is not resident in Jamaica and is not liable to income tax in respect of such dividend in the country in which he is resident:

Provided that the exemption from income tax created by this subsection shall not exceed, as regards the rate of the tax from which the shareholder is relieved, the rate of the tax which would, but for the provisions of section 9, have been paid by the company on the profits or gains out of which the dividend is paid.

(5) Where a shareholder to whom a dividend is paid out of profits or gains relieved from income tax by virtue of the provisions of section 9 is not resident in Jamaica and is liable to income tax in respect of the dividend in the country in which he is resident, he shall be exempt from so much of the income tax in respect of that dividend as the Commissioner of Income Tax is satisfied exceeds his liability in respect of such dividend in the country in which he is resident:

Provided that the exemption from income tax created by this subsection shall not exceed, as regards the rate of the tax from which the shareholder is relieved, the rate of the tax which would, but for the provisions of section 9, have been paid by the company on the profits or gains out of which the dividend is paid.

(6) Save as is otherwise provided in this section the provisions of the law relating to income tax in regard to the deduction of income tax from dividends, and the refund of income tax to shareholders shall apply to dividends paid by a company out of profits or gains relieved from income tax by virtue of the provisions of section 9.

11. Benefits in respect of customs duty and tax.

11. (1) Any company to which section 8 applies shall, if it fulfils the requirement specified in subsection (2), be entitled at any time prior to the expiration of the relevant concession period to import into Jamaica free of customs duty and general consumption tax the articles specified in the Second Schedule.

(2) The requirement referred to in subsection (1) is that the company importing the articles referred to in that subsection shall satisfy the Commissioner of Customs and Excise that such articles are not prohibited from importation by law and are imported for constructing or equipping the hotel or extension, as the case may be, referred to in paragraph (a) of section 8 and of which it is, or, upon the construction thereof, will be, the owner, tenant or operator.

(3) Any articles referred to in subsection (1) which are imported during the period between the date of application for declaration of any hotel enterprise or any extension or other alteration of any hotel as an approved hotel enterprise or an approved extension, as the case may be, and the date of such declaration shall, for the purposes of subsection (2), be treated as if they were imported after such declaration.

(4) The Minister may from time to time by order vary or amend the Second Schedule.

(5) For the purposes of this section the expression "any company to which section 8 applies" includes any company which will, upon the construction of any hotel or any extension to a hotel in relation to which an order under section 3 or section 4 has been made, be the owner, tenant or operator of that hotel or extension.

12. Commissioner of Customs and Excise may require records, etc.

12. Every person who imports into Jamaica any articles free of customs duty and general consumption tax under the provisions of section 11 shall -

(a) keep such record in such form and containing such particulars as the Commissioner of Customs and Excise may from time to time require in relation to such articles;

(b) cause such articles to be marked with such mark and in such manner as the Commissioner of Customs and Excise may require;

(c) permit the Commissioner of Customs and Excise or any person authorized by him at all reasonable times to inspect such record and to have access to any premises under the control of the person by whom such articles were imported for the purpose of examining any of such articles which the Commissioner of Customs and Excise may believe to be in those premises and of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

13. Restriction upon disposition of articles imported free of customs duty and upon use of buildings.

13. (1) No article imported into Jamaica free of customs duty and general consumption tax under the provisions of section 11 shall be used for any purpose other than the purpose for which the Commissioner of Customs and Excise was satisfied under that section that it would be used, nor shall it be sold, given away or otherwise disposed of by the person by whom it was imported -

(a) unless prior permission is given by the Minister for the use thereof for such other purpose or for such sale, gift or other disposal; or

(b) unless the person by whom such article was imported pays or gives security to the satisfaction of the Commissioner of Customs and Excise for the payment of an amount equivalent to the amount of customs duty and general consumption tax which would have been payable upon the importation of such article but for the provisions of this Act; or

(c) except after the expiration of five years from the date of importation into Jamaica of such article.

(2) No building forming part of any hotel in relation to which an order has been made under section 3 or section 4 shall be used, during the period between the coming into force of such order and the expiration of the relevant concession period, for purposes other than hotel purposes without the prior permission of the Minister:

Provided that the Minister may, as a condition for the grant of his permission, require that all the sums or in his discretion, any part of such sums, which but for the provisions of section 11 would have been payable as customs duty or general consumption tax on the importation of any articles used in the construction or equipping of such building shall be paid to the Commissioner of Customs and Excise.

14. Saving of liability to comply with requirements of law relating to income tax, etc.

14. Nothing in this Act shall exempt any company to which section 8 applies from making any return to the Commissioner of Income Tax or from complying with the law relating to income tax in any other respects so as to establish the liability, if any, of that company to income tax or from complying with the law relating to the collection of customs duty and general consumption tax so as to establish the liability, if any, of that company to customs duty or general consumption tax.

15. Commissioner of Income Tax may refuse to treat certain receipt and payments as received or made in a particular year of assessment.

15. For the purpose of assessment to income tax of the chargeable income of any company to which section 8 applies the Commissioner of Income Tax may refuse to accept an amount as payable or paid to such company or as an expense incurred by it in a particular year of assessment which is shown by such company in its accounts as payable, paid or incurred, as the case may be, in that year of assessment on the ground that such an amount relates to a transaction entered into by such company otherwise than in the normal course of business, either with the object of inflating its profits or gains in a year of assessment in which its profits or gains were, by virtue of the provisions of this Act, relieved of income tax or with the object of artificially reducing its profits or gains in a year of assessment in which its profits or gains were not, by virtue of the provisions of this Act relieved from income tax.

16. Commissioner of Income Tax may issue certificates.

16. Notwithstanding the provisions of section 4 of the Income Tax Act, it shall be lawful for the Commissioner of Income Tax to certify in such form as may be prescribed the benefits enjoyed by any company to which section 8 of this Act applies in order that such certificates may be produced by such company to the fiscal authorities in any other country in which such company may be liable to suffer taxation.

17. Offences.

17. (1) The provisions of section 99 of the Income Tax Act shall apply to any false statement or representation made or any false return delivered or any false accounts kept or prepared with reference to any of the benefits of section 9 of this Act as if such false statement or representation had been made, or such false return had been delivered, or such false accounts had been kept or prepared, with reference to income tax or profits or gains chargeable under the Income Tax Act.

(2) Every person who contravenes the provisions of section 12 or of section 13 shall be guilty of an offence and shall be liable on summary conviction before a Resident.

Magistrate to a fine not exceeding one thousand dollars and in default of payment to imprisonment for a term not exceeding twelve months.

18. Regulations.

18. The Minister may make regulations generally for the better carrying out of the purposes of this Act and in particular but without prejudice to the generality of the foregoing may make regulations -

(a) in regard to the adjustment of profits or gains when the accounting period of any company to which section 8 applies falls partly within and partly outside the period during which relief from income tax is enjoyed by such company under this Act;

(b) for the adjustment of profits or gains, including the adjustment of allowances and the carrying forward of losses, when any company to which section 8 applies was at the time at which it became the owner, tenant or operator of an approved hotel enterprise or an approved extension, already engaged in business;

(c) prescribing any other matter or anything which may be, or is required by this Act to be, prescribed.

FIRST SCHEDULE (Section 8)

The Motion Picture Industry (Encouragement) Act.

The Industrial Incentives Act.

The Export Industry Encouragement Act.

SECOND SCHEDULE (Section 11)

All building materials.

Bedsprings, billiard tables and their appliances, pianos, organs, radios, dynamos, air-conditioning apparatus and appliances, refrigerating apparatus and appliances, mirrors, mattresses, crockery, silver and plated tableware, table glassware, cutlery, kitchen utensils including stoves, iceboxes, bed linen, table linen, towels, rugs and carpets.

Fire extinguishers and apparatus.

Water pumps.

Blankets.

Electric light, bell and telephone equipment and appliances (not to include electric light bulbs).

Electric fans.

Electric and gas cooking equipment.

Hot water equipment, boilers and tanks.

Kitchen sinks and other kitchen fixtures.

Bath tubs, basins, toilets, showers and other bathroom fittings.

Elevators.
Swimming pool equipment.
Computer hardware.
Golf carts.
Bar equipment.
Laundry equipment.
Sewerage plant and equipment.
Security vaults and safes.
Conference Room equipment (for example, acoustical equipment).
Sports and gym equipment.
Television and radio equipment.
Satellite communications systems (not more than one such system.)
Electrical transformers and panel board.
Commercial floor polishers.
Commercial vacuum cleaners.
Ice-making machines.
Drapery material and upholstery fabrics.
Water treatment plant and equipment.
Watersports equipment, boats, other types of seacraft (excluding jet skis and wave runners) and parts therefore.