

THE FOREIGN SALES CORPORATION ACT

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THE FOREIGN SALES CORPORATION ACT

Act
20 of 1984

[14th November, 1984.]

1. This Act may be cited as the Foreign Sales Corpora- Short title.
tion Act.

2. In this Act, unless the context otherwise requires— Interpretation.
tion.

“designated corporation” means a foreign sales corporation in relation to which a certificate of designation has been granted under section 3 and remains in force;

“domestic operations” in relation to a designated corporation means—

- (a) the acquisition or rental of accommodation to be occupied and used by a designated corporation for the purposes of its business or to be used for the purpose of providing living accommodation for employees or officers of the corporation;
- (b) the maintenance or disposal of such accommodation as aforesaid;
- (c) the provision of staff for the corporation;
- (d) the provision of equipment and services for use in such accommodation or by such staff as aforesaid for the purposes of the business of the corporation;
- (e) the provision of technical and professional advice and services (including advice and ser-

vices as a director of the corporation) for the purposes of the business of the corporation;

- (f) such other operations as may be prescribed by the Minister by order;

“foreign sales corporation” means any corporation which—

- (a) is incorporated or registered under the Companies Act;
- (b) is, pursuant to the provisions of the relevant legislation in a scheduled State, qualified to be regarded as a foreign sales corporation in that State; and
- (c) has elected, or satisfied the Minister that it proposes to elect within a period indicated by the corporation to the Minister, to be so regarded in that State;

“foreign trade transaction” means, subject to the provisions of this Act, any transaction—

- (a) entered into by a designated corporation with persons not resident in Jamaica; and
- (b) which, pursuant to the relevant legislation of the scheduled State, is the source from which foreign trade income is determined in establishing the tax liability of a foreign sales corporation in that State;

“relevant legislation” in relation to any scheduled State means the legislation of that State which provides for tax concessions to foreign sales corporations and which is specified, in relation to the scheduled State, in the second column of the First Schedule.

“scheduled State” means a State which—

- (a) is specified in the first column of the First Schedule; and

First
Schedule.

- (b) by its legislation provides for the grant of tax concessions to foreign sales corporations.

3.—(1) The Minister may, on the application of a foreign sales corporation, grant a certificate certifying that the corporation is a designated corporation for the purposes of this Act.

Power of Minister to grant certificate of designation to foreign sales corporation.

(2) A certificate under this section shall, subject to the provisions of this Act, be valid for a period of fifteen years and may from time to time be re-issued for further periods of fifteen years.

(3) An application for a certificate under subsection (1) shall be made in writing to the Minister in such form and containing such particulars as may be prescribed.

4.—(1) A designated corporation may, by notice in writing to the Minister, terminate its status as a designated corporation from such date as may be specified in the notice.

Termination of status as designated corporation.

(2) Subject to subsection (3), the Minister may, by notice in writing to a designated corporation, terminate from such date as may be specified in the notice, the certification of that corporation if—

- (a) the corporation ceases to be a foreign sales corporation in the scheduled State pursuant to the relevant legislation; or
- (b) the Minister is satisfied that the corporation has failed to comply with the provisions of this Act.

(3) Before terminating a certificate of designation pursuant to subsection (2) the Minister shall afford to the corporation an opportunity—

- (a) to explain the circumstances of the cessation, or as the case may be, failure; and

(b) if possible, to take such steps as may be appropriate to avoid termination.

(4) The status of a corporation as a designated corporation shall, notwithstanding any notice under this section and subject to subsection (5), continue until the end of the year of assessment in which the notice takes effect or until—

(a) such earlier date as the corporation may specify; or

(b) such later date as the Minister, on the application of the corporation, may allow.

(5) Where at any time before—

(a) the end of the year of assessment referred to in subsection (4); or

(b) the date referred to in paragraph (b) of that subsection,

the Minister is satisfied as respects any corporation served with a notice under this section that the corporation has taken such steps as would justify the revocation of that notice, the Minister may revoke such notice and thereupon the corporation shall continue in the status of a designated corporation as if the notice of termination had not been issued.

Relief from
income tax.

5.—(1) Subject to subsection (2), a designated corporation shall, in respect of the year of assessment in which it is certified a designated corporation and any subsequent year of assessment, so long as it remains a designated corporation, be exempt from income tax (including company profits tax and additional company profits tax) in respect of income arising from foreign trade transactions.

(2) A designated corporation shall be relieved of income tax in respect of—

(a) interest on loans or deposits; and

(b) other approved investment activity.

(3) In this Act “approved investment activity” means investment in such ventures in Jamaica as the Minister may from time to time approve for such period and on such terms and conditions as he may specify.

(4) Nothing in this section shall exempt a designated corporation from its obligation—

- (a) to deduct and account to the Commissioner of Inland Revenue for income tax required to be withheld from emoluments payable to its employees; or
- (b) to render to the Commissioner of Inland Revenue, returns and information required pursuant to the Income Tax Act.

L.N.
165/1999.

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6.—(1) Where a person is entitled, pursuant to a treaty between a scheduled State and Jamaica, to set off against income tax payable by him in a scheduled State income tax payable in Jamaica, he shall be entitled to relief from so much of the income tax payable by him in respect of the emoluments earned by him in the capacity of director or, as the case may be, employee of a designated corporation as exceeds his liability to income tax in the scheduled State.

Relief from income tax of director or employees of designated corporation.

(2) Where such person as referred to in subsection (1) is not entitled as mentioned in that subsection, he shall be relieved of so much of the income tax payable by him in Jamaica as may be required to avoid double taxation of the emoluments aforesaid.

7.—(1) A designated corporation shall be exempt from the provisions of the Human Employment and Resource Training Act.

Exemption from certain statutory contributions.

(2) A person who is employed in Jamaica as a director, or, as the case may be, employee of a designated corporation shall—

- (a) if he is not ordinarily resident in Jamaica, be exempt from the provisions of the enactments referred to in subsection (4);
- (b) in any other case, be liable to pay contributions or tax pursuant to those enactments.

(3) A designated corporation shall, as regards the enactments referred to in paragraphs (a) and (b) of subsection (4), be exempt from any liability to pay contributions or tax as an employer but nothing in this subsection shall—

- (a) exempt the designated corporation from its liability to pay contributions under the enactment referred to in paragraph (c) of subsection (4);
- (b) in relation to any employee referred to in paragraph (b) of subsection (2), exempt a designated corporation from its obligations under all the enactments referred to in subsection (4)—
 - (i) to deduct from the emoluments of the employee, contributions or tax payable by such employee and to make payment of the amount deducted to the appropriate authority; and
 - (ii) to make such returns and supply such information in relation to the employee as may be required pursuant to those enactments.

(4) The enactments referred to in subsections (2) and (3) are—

- (a) the National Housing Trust Act;
- (b) the provisions of any law for the time being in force relating to the payment of education tax;
- (c) the National Insurance Act.

8.—(1) Where a shareholder in a designated corporation is not resident in Jamaica he shall be exempt from income tax in respect of any dividend paid to him by that designated corporation out of income exempt or relieved from tax pursuant to section 5.

Dividends to non-resident shareholders in designated corporation.

(2) The provisions of the Income Tax Act relating to the deduction of income tax from dividends to shareholders shall not apply to dividends exempt from income tax pursuant to subsection (1).

9.—(1) A designated corporation may effect transactions relating to its domestic operations with persons resident in Jamaica and may also, with the prior approval of the Minister, effect other business transactions with such persons (including approved investment activities).

Transactions with persons resident in Jamaica.

(2) No person shall be deemed for the purposes of this Act to be a person resident in Jamaica by reason only of the fact that he visits Jamaica from time to time for the purpose of attending meetings of shareholders or directors of the designated corporation; nor shall the period of any such visit be taken into account in determining whether or not a person not ordinarily resident in Jamaica has become so resident.

10. [*Deleted vide Act 11 of 1992, S. 2.*]

11.—(1) Every designated corporation shall be entitled to import into Jamaica any equipment, machinery or materials free of customs duty, stamp duty and general consumption tax

Free entry of machinery and equipment.

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93s/86.

(hereinafter referred to as customs and similar duties) if the Commissioner of Customs is satisfied that such goods are imported primarily for the purpose of providing facilities for the carrying out of foreign trade transactions.

L.N.
93s/86.

(2) Where a designated corporation purchases in Jamaica goods described in subsection (1) which, pursuant to that subsection, may be imported free of customs and similar duties, there shall be a waiver of any such duties or excise duty, which the Commissioner of Customs is satisfied have been paid, or, as the case may be, are payable in respect of those goods.

Restrictions
upon the
disposal of
goods im-
ported or
purchased
free of
customs and
similar
duties.

12. No goods imported into, or purchased in Jamaica by any designated corporation free of excise duty or customs and similar duties under the provisions of this Act shall be sold, given away or otherwise disposed of except—

L.N.
93s/86.

- (a) upon the designated corporation paying or giving security to the satisfaction of the Commissioner of Customs for the payment of an amount equivalent to the amount of excise duty, customs and similar duties which would have been payable upon the importation or purchase of such goods but for the provisions of this Act; or
- (b) after the expiration of three years from the date of the importation into, or, as the case may be, purchase in, Jamaica of such goods.

13.—(1) There shall be paid by a designated corporation fees in accordance with the provisions of the Second Schedule.

Fees.
Second
Schedule.

(2) The Minister may by order amend the Second Schedule and any such order shall be subject to affirmative resolution of the House of Representatives.

14.—(1) Subject to the provisions of this section, where the income in foreign currency of a designated corporation is invested in prescribed investment for a minimum period of five years, there shall be exempt from income tax the income arising from those investments.

Exemption
from in-
come tax
of invest-
ment in
foreign
currency.

(2) Where a designated corporation terminates a prescribed investment within five years from the end of the year of assessment in which that investment was made, such corporation shall not be entitled to any relief under subsection (1).

(3) In this section “prescribed investments” means such investments as the Minister may from time to time, by order, prescribe.

15.—(1) 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—

Regula-
tions.

- (a) providing for returns to be submitted and information to be furnished for the purpose of an application for a certificate;
- (b) prescribing records to be kept and the returns to be furnished by designated corporations;
- (c) amending the First Schedule;

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(d) prescribing other matters required by this Act to be prescribed.

(2) Regulations made under subsection (1) (c) shall be subject to affirmative resolution.

FIRST SCHEDULE

(Section 2)

Scheduled StateRelevant Legislation

United States of America
including the Common-
wealth of **Puerto Rico**.

The Deficit Reduction Act of 1984.

SECOND SCHEDULE

(Section 13)

1. The fees payable pursuant to section 13 shall be paid by each designated corporation—

- (a) initially, on the date on which the certificate is granted under section 3;
- (b) thereafter, on or before the 1st day of January in each subsequent year;
- (c) at the rate set out in paragraph 2.

2.—(1) Where the designated corporation has elected pursuant to the relevant legislation to be treated as a small foreign sales corporation in the scheduled state

...	US\$ 500 per annum
(2) In any other case	US\$1,000 per annum