

THE INCOME TAX RELIEF (LARGE-SCALE PROJECTS AND PIONEER INDUSTRIES) ACT

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THE INCOME TAX RELIEF (LARGE-SCALE PROJECTS
AND PIONEER INDUSTRIES) ACT

Act
36 of 2013

[1st January, 2014.]

1. This Act may be cited as the Income Tax Relief (Large-scale Projects and Pioneer Industries) Act. Short title.

2. In this Act, unless the context otherwise requires— Inter-pretation.

“approved large-scale project” means a project designated as approved large-scale project under section 3;

“approved participant” means a company in relation to which a certificate of approval has been granted under section 6;

“approved pioneer industry” means an economic activity designated as an approved pioneer industry under section 3;

“certificate of approval” means a certificate of approval granted under section 6;

“commercial application”, in relation to scientific research, means the application, utilization or exploitation of the results of such scientific research in the manufacture, production, sale, distribution or provision, as the case may be, of goods or services in the course of any trade, business, or profession, and includes any business or commercial activity that is necessary for or related to the promotion, development or growth of any such trade, business, or profession;

“Commissioner General” means the Commissioner General appointed under section 4 of the *Revenue Administration Act*;

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“scientific research” means any activities in the field of natural or applied science (including the human sciences) for the extension of knowledge and includes activities aimed at discovering new knowledge about products, processes or services and applying that knowledge to create new and improved products, processes or services;

“specified incentive” means any tax credit granted under this Act, in respect of any tax imposed under the *Income Tax Act*;

“tax expenditure” means revenue forgone by the Government arising from the granting of any specified incentive, to a particular taxpayer or category of taxpayers.

Ministerial
order
designating
project or
activity or
granting
incentives.

3.—(1) Subject to the provisions of this Act, the Minister may make an order—

(a) designating—

- (i) a project as an approved large-scale project; or
- (ii) an economic activity as an approved pioneer industry; and

(b) subject to subsection (3)—

- (i) prescribing the specified incentives in respect of a project or industry that is designated under paragraph (a), that may be granted consequent on an application made under section 6, in addition to, or in place of, any other fiscal incentives that are applicable, or would otherwise be applicable, in respect of that project or industry; and

- (ii) imposing, as appropriate, conditions for the designation of a project or economic activity, or the granting of specified incentives in relation thereto.

(2) An order under subsection (1)—

- (a) is subject to affirmative resolution; and
- (b) shall, when it is tabled in Parliament for affirmation, be accompanied by a cost-benefit analysis of any specified incentives that are to be granted under the order.

(3) In this section “fiscal incentive” means any exemption or relief, in respect of any tax, duty, fee, levy, fine or other impost, that is granted under any enactment.

4. Before making an order to designate a project as an approved large-scale project, the Minister shall be satisfied that the project to be designated is one—

- (a) that is consistent with the strategic priorities of the Government of Jamaica.
- (b) in respect of which the projected amount of capital investment or jobs created in Jamaica will respectively be not less than the amounts prescribed by the Minister for the purposes of this paragraph; and
- (c) that is likely to make a substantial contribution to Jamaica’s economic growth and national development.

Matters to be taken into account by Minister when designating large-scale project.

5. Before making an order to designate an economic activity as an approved pioneer industry, the Minister shall be satisfied that the economic activity to be designated is one—

- (a) that is consistent with the strategic priorities of the Government of Jamaica;

Matters to be taken into account by Minister when designating pioneer industry.

- (b) that is not being carried out in Jamaica on a substantial commercial basis and that involves or is intended to involve the commercial application of the results of scientific research; and
- (c) for which there are favourable prospects of it being developed so as to have a transformational impact on the economy of Jamaica.

Declaration of approved participant.

6.—(1) Upon application by a company desirous of being declared an approved participant in respect of an approved large-scale project or, as the case may be, an approved pioneer industry, the Minister may, subject to section 7 and to such terms and conditions as the Minister thinks fit, grant a certificate of approval to the company, in accordance with an order made under section 3—

- (a) declaring the company as an approved participant; and
- (b) stating the specified incentives to which the approved participant is entitled.

(2) An application under subsection (1) is to be made in writing to the Minister in such form and containing such particulars as may be prescribed.

(3) The Minister may in relation to an application under this section, require the applicant to provide such additional information as the Minister considers necessary or desirable to enable the Minister to decide whether or not to grant a certificate under this section.

Restrictions on Minister's power to make orders and grant certificates: tax expenditure factors.

7.—(1) Notwithstanding the provisions of sections 3 and 6, as applicable, the Minister shall not at any time during a financial year make an order under section 3 or grant a certificate of approval under section 6, if the Minister is satisfied that the likely effect of the order or the certificate is to cause the estimated aggregate tax expenditure incurred during that financial year ("the base year") or any other financial year, to exceed the specified limit.

(2) The validity of an order made under section 3 or a certificate of approval, or of any entitlement thereunder, is not affected if, at any time subsequent to the making of the order or the granting of the certificate or entitlement, it is determined that the tax expenditure arising from any such entitlement resulted in the estimated aggregate tax expenditure for the base year or any other financial year exceeding the specified limit.

(3) In this section—

“estimated aggregate tax expenditure” in relation to any financial year means the tax expenditure, as determined in the prescribed manner, attributable to orders made under section 3 or certificates of approval granted under section 6;

“specified limit” means the amount equivalent to 0.25 per cent of the Gross Domestic Product of Jamaica for the financial year immediately preceding the base year.

8. A certificate of approval granted to an approved participant may, consequent upon and in accordance with an application in writing (whether electronic or otherwise) made by the participant, be amended, if the Minister considers it appropriate to do so.

Amendment
of
certificate.

9.—(1) If the Minister, after consultation with the Commissioner General, is satisfied that an approved participant has knowingly contravened, or failed to comply with, any term or condition applicable to that participant under a certificate of approval, the Minister may cancel the certificate of approval.

Cancellation
of certificate
of approval.

(2) Before taking action under subsection (2), the Minister shall give to the approved participant an opportunity to explain the circumstances of the contravention or failure.

(3) The cancellation of a certificate pursuant to subsection (1) in respect of any participant shall not affect any entitlement to specified incentives that may have accrued, in relation to that participant prior to the cancellation.

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Report to
Parliament on
tax
expenditure.

10.—(1) The Minister shall cause to be included in the Tax Expenditure Statement required to be tabled in the House of Representatives under section 48F of the *Financial Administration and Audit Act*, a report as specified in subsection (2).

(2) The report shall contain, in relation to the period specified in paragraph (a)(i) of section 48F(1) of the *Financial Administration and Audit Act*, namely the calendar year preceding the previous financial year, details of the orders made and certificates of approval granted under this Act during that calendar year, and the aggregate tax expenditure in that calendar year incurred thereby.

Publication in
Gazette.

11. The Minister shall forthwith cause to be notified in the *Gazette* the grant and any amendment or cancellation, of a certificate of approval.

Regulations.

12.—(1) The Minister may make regulations generally giving effect to the provisions of this Act, and without limiting the generality of the foregoing, the regulations may—

- (a) provide for the procedure for making and processing applications for approval under this Act;
- (b) provide for information to be furnished for the purpose of an application for a certificate of approval;
- (c) provide for returns to be submitted by approved participants;
- (d) prescribe fees payable in respect of applications processed or other services provided under this Act;
- (e) prescribe other matters required by this Act to be prescribed.

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

(3) Notwithstanding section 29(b) of the *Interpretation Act*, regulations made under subsection (1) may provide in respect of a breach of any provision thereof for the imposition of penalties of a fine not exceeding one million dollars or of imprisonment for a term not exceeding six months or of both such fine and imprisonment.

13. The Minister may, by order subject to affirmative resolution, amend any monetary penalty prescribed in this Act.

Power of
Minister to
amend
monetary
penalties.