THE RESORT COTTAGES (INCENTIVES) ACT

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SCHEDULE

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THE RESORT COTTAGES (INCENTIVES) ACT

Acts 31 of 1971, 23 of 1972 S. 3 (2) (b), 12 of 1985 Sch. 16 of 1991 S. 64.

[*4th November, 1971.*]

1. This Act may be cited as the Resort Cottages (Incentives) Act. Short title.

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

"annual allowance", "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;

"designation" means the instrument by which any resort cottage, or group of resort cottages, or any extension or other alteration is designated as a recognized resort cottage, or recognized group, or recognized extension, as the case may be;

"recognized extension" means an extension or other alteration designated under section 4 as a recognized extension;

"recognized group" means two or more resort cottages designated under section 3 as a recognized group of resort cottages;

"recognized resort cottage" means a resort cottage designated under section 3 as a recognized resort cottage, or a resort cottage in any recognized group;

"relevant concession period" means, in relation to any recognized resort cottage, or recognized group, or recognized extension, the period of seven years

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commencing on the date specified in the designation relating to such recognized resort cottage, or recognized group, or recognized extension, as the case may be, from which relief from income tax shall be enjoyed under section 7 in relation thereto;

"resort cottage" means any building containing or intended to contain when completed not less than two furnished bedrooms, a furnished living room, bathroom facilities and facilities for the preparation and consumption of meals, and used or intended to be used for the accommodation of transient guests including tourists for reward;

"tenant" does not include a transient guest;

"transient guest" means any person occupying a resort cottage for hire for a period not exceeding sixty days in any year.

Designation of resort cottages and groups of resort cottages.

3.—(1) Subject to the provisions of subsection (3) and section 6 the Minister may by instrument in writing designate any resort cottage, whether such resort cottage is in existence at the date of such designation or is proposed to be constructed thereafter, as a recognized resort cottage for the purposes of this Act.

(2) Subject to the provisions of subsection (3) and section 6 the Minister may by instrument in writing designate two or more resort cottages—

(*a*) containing an aggregate number of not less than ten bedrooms; and

(*b*) situated in the same district, village or town; and

(*c*) owned by the same person,

as a recognized group of resort cottages for the purposes of this Act, whether any of such resort cottages are in existence at the date of such designation or are proposed

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to be constructed thereafter; and each of such resort cottages shall, upon such designation, become a recognized resort cottage.

(3) The Minister shall not make any designation under this section unless he is satisfied that—

(*a*) the buildings in respect of which application is made for such designation were not in existence before the 1st day of April, 1968; and

(*b*) arrangements have been made to ensure that any resort cottage recognized under such designation will be operated as a resort cottage; and

(*c*) adequate finances will be available for constructing, equipping and operating the resort cottage in respect of which application is made for such designation; and

(*d*) such operation will have beneficial economic effects, including the effect on the tourist trade.

(4) Any designation under this section may include such terms and conditions as the Minister may think fit and shall—

(*a*) identify the persons who shall be entitled to enjoy relief from income tax under section 7, and the persons, if any, who shall be entitled to enjoy relief from customs duty under section 9; and

(*b*) specify the date on which the operation of the resort cottage or resort cottages, as the case may be, shall commence or be deemed to commence and from which relief from income tax shall be enjoyed under section 7 in relation to such resort cottage or resort cottages, as the case may be, and such date may be earlier than the date of such designation, but shall not be earlier than the 1st day of April, 1968.

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(5) Subject to the provisions of section 6 every recognized resort cottage or recognized group shall cease to be a recognized resort cottage or recognized group, as the case may be, at the expiration of the relevant concession period.

Designation of recognized extension.

4.—(1) Subject to the provisions of subsection (2) and section 6 the Minister may by instrument in writing designate as a recognized extension for the purposes of this Act—

(*a*) any substantial structural alteration of any recognized resort cottage, or any other development of the land usually occupied therewith, which improves or will improve the accommodation or other amenities provided by such resort cottage; or

(*b*) any substantial structural alteration of any other building, or any other development of the land usually occupied therewith, which improves or will improve the accommodation or other amenities provided by such building.

(2) The Minister shall not make any designation under this section unless he is satisfied—

(*a*) in the case of an application in relation to any alteration mentioned in paragraph (*b*) of subsection (1) that upon completion of such alteration the building to which the application relates was or will be a resort cottage; and

(*b*) that adequate finances will be available for constructing and equipping such extension, or, in the case of an application in relation to any alteration mentioned at paragraph (*b*) of subsection (1), for constructing such extension and equipping and

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operating as a resort cottage the building to which such extension is proposed to be made; and

(*c*) that such operation will have beneficial economic effects including the effect on the tourist trade.

(3) Any designation under this section may include such terms and conditions as the Minister may think fit and shall—

(*a*) identify the persons who shall be entitled to enjoy relief from income tax under section 7; and

(*b*) specify the date on which the operation of the recognized extension shall commence or be deemed to commence and from which relief from income tax shall be enjoyed under section 7 in relation to such recognized extension, and such date may be earlier than the date of such designation, but shall not be earlier than the 1st day of April, 1968.

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

Application for designation.

5. Every application for a designation under section 3 or section 4 shall be made in such form as may be approved by the Minister and shall contain such information and be accompanied by such plans, specifications, drawings, reports and other documents, as the Minister may require.

Amendment and revocation of designations.

6.—(1) The Minister may at any time before the expiration of the relevant concession period amend any designation made under section 3 or section 4 at the request of the person by whom or on whose behalf application was made for such designation, or of any other person who, at the time of such request, appears to the Minister to be the owner of the resort cottage to which such request relates.

[The inclusion of this page is authorized by L.N. 480/1973]

(2) The Minister may at any time before the expiration of the relevant concession period revoke any designation made under section 3 or section 4—

(*a*) at the request of the person by whom or on whose behalf application was made for such designation or of any other person who, at the time of such request, appears to the Minister to be the owner of the resort cottage to which such request relates; or

(*b*) where he is satisfied that the building in relation to which such designation was made has ceased to be a resort cottage; or

(*c*) where, in respect of the resort cottage in relation to which such designation was made, there has been any contravention of section 15.

(3) Where the Minister is satisfied that there is failure to commence the operation of any resort cottage or extension in relation to which a designation was made under section 3 or section 4, in accordance with such designation or the proposals contained in the application for such designation he may, by notice in writing, require the person by whom or on whose behalf such application was made, or any other person who appears to the Minister to be the owner of such resort cottage or extension, 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 such operation within a reasonable time. If the Minister does not receive, within the period specified in the notice, information which is satisfactory to him he may, if he thinks it expedient so to do, amend or revoke such designation.

(4) Where the Minister is satisfied, after making a designation under section 3 or section 4, that any represen-

[The inclusion of this page is authorized by L.N. 480/1973]

tations made in or in connection with the application for such designation 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 make such designation he may by notice in writing require the person by whom or on whose behalf such application was made, or any other person who appears to the Minister to be the owner of the resort cottage in respect of which such application was made, to show cause to the satisfaction of the Minister within such period as the notice shall specify why such designation should not be amended or revoked. If such person fails to show cause accordingly the Minister may, if he thinks it expedient so to do, amend or revoke such designation.

Income tax benefits.

7.—(1) Any person who—

(*a*) is for the time being the owner or tenant of any recognized resort cottage or any resort cottage to which a recognized extension has been made, whether or not such person is the operator or is entitled to receive any profits arising from the operation of such resort cottage; or

(*b*) not being the owner or tenant of such resort cottage, operates it in accordance with an agreement made between himself and the owner or tenant and certified by the Minister to be acceptable for the purposes of this Act,

and is so identified in the designation relating to such recognized resort cottage or recognized extension, as the case may be, shall be entitled to relief from income tax in respect of profits or gains arising or accruing during the relevant concession period from such recognized resort cottage or recognized extension.

[The inclusion of this page is authorized by L.N. 60/1976]

(2) Notwithstanding anything in the law relating to income tax initial allowances shall not be made in respect of assets acquired, in relation to a recognized resort cottage or recognized extension 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 person who 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 losses 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 recognized extension shall be determined in such manner as may be prescribed.

Dividends.

8.—(1) Every company which is entitled under section 7 to relief from income tax in respect of profits or gains arising or accruing from a recognized resort cottage or a recognized 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.

[The inclusion of this page is authorized by L.N. 60/1976]

(2) Unless, pursuant to the proviso to section 38 (1) of the Income Tax Act, the Commissioner of Taxpayer Audit and Assessment otherwise decides, 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 7 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. L.N. 165/1999.

(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 amount so deducted. 12/1985 Sch.

(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 7 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 7, have been paid by the company on the profits or gains out of which the dividend is paid. 23/1972 S. 3 (2) (b).

(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 7 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

[The inclusion of this page is authorized by L.N. 87/2004]

much of the income tax in respect of that dividend as the Commissioner of Taxpayer Audit and Assessment is satisfied exceeds his liability in respect of such dividend in the country in which he is resident:

L.N. 165/1999.

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 7, have been paid by the company on the profits or gains out of which the dividend is paid.

23/1972 S. 3 (2) (b).

(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 7.

23/1972 S. 3 (2) (b).

Benefits in respect of customs duty and tax. 16/1991 S. 64.

9.—(1) Any person who—

(*a*) is for the time being the owner or tenant of all the resort cottages constituting a recognized group, whether or not such person is the operator or is entitled to receive any profits arising from the operation of any of such resort cottages; or

(*b*) not being the owner or tenant as aforesaid, operates all the resort cottages in such recognized group in accordance with an agreement made between himself and the owner or tenant and certified by the Minister to be acceptable for the purposes of this Act,

and is so identified in the designation relating to such recognized group may, if he fulfils the requirement specified in subsection (2), be granted a permit by the Commissioner of Customs to import into Jamaica free of customs duty and general consumption tax, at any time

12/1985 Sch.

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(*b*) permit any person authorized in that behalf by the Minister to enter any premises under the control of such owner, tenant or operator, as the case may be, in which such books, records and accounts are kept and to inspect, and make copies of entries therein; and

(*c*) if required so to do by the Minister or any person authorized in that behalf by him, produce, at such time and place as the Minister or such person may specify, any books, records, accounts or other documents relating to that resort cottage; and

(*d*) at such times and to such persons as the Minister may specify, make such returns as may be prescribed and give such other information relating to that resort cottage as the Minister may require.

Offences.

16.—(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 7 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) Any person who—

(*a*) obtains any permit under section 9 by means of any statement which he knows to be false; or

(*b*) contravenes the provisions of section 10 or section 11 or section 15,

shall be guilty of an offence and 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.

[The inclusion of this page is authorized by L.N. 60/1976]

Regulations.

17. 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*) for ensuring that recognized resort cottages are not used, except in such circumstances and on such conditions as may be specified in such regulations, for any purpose other than the accommodation of transient guests;

(*b*) in regard to the adjustment of profits or gains when the accounting period of any person who enjoys relief from income tax by virtue of the provisions of section 7 falls partly within and partly outside the period during which such relief is enjoyed by that person;

(*c*) for the adjustment of profits or gains, including the adjustment of allowances and the carrying forward of losses, when any person who enjoys relief from income tax by virtue of the provisions of section 7 was at the time at which he became the owner, tenant or operator of a recognized resort cottage or of a building to which a recognized extension was made, already engaged in business;

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

[The inclusion of this page is authorized by L.N. 60/1976]

SCHEDULE (Section 9)

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.

Swimming pool equipment. L.N. 38/91.

Laundry equipment (namely domestic and commercial washers and dryers).

Sewerage plant and equipment.

Security vaults and safes.

Gym equipment.

Television and radio equipment.

Electrical transformers and panel board.

Commercial floor polishers.

Commercial vacuum cleaners.

Drapery material and upholstery fabrics.

Water treatment plant and equipment.

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