

THE MOTION PICTURE INDUSTRY
(ENCOURAGEMENT) ACT

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THE MOTION PICTURE INDUSTRY
(ENCOURAGEMENT) ACT

[10th December, 1948.]

PART I—*General*

1. This Act may be cited as the Motion Picture Industry (Encouragement) Act. **Short title.**

2. In this Act—

“local disbursement” means money spent in Jamaica for the purchase of any article manufactured or produced in Jamaica or as salary or wages to any person who was born in Jamaica or who has been domiciled in Jamaica for at least five years immediately prior to his first employment in Jamaica by any recognized motion picture producer;

“motion picture production” means the manufacturing, making and producing of motion picture and television films, acoustical accompaniments recordings and sound transcriptions of every kind, nature and description, and leasing, importing or otherwise acquiring equipment supplies rights and personnel useful therefor and distributing selling licensing renting, exporting or otherwise disposing of such motion picture and television films acoustical accompaniments recordings and sound transcriptions and developing improving and maintaining a film industry; and of exercising taking and delegating whatever powers and actions are or may become necessary or convenient to the effectuating of these and all relating purposes;

“production year” used in relation to any recognized motion

Cap. 256.
Acts
23 of 1972
S. 3(2)(b),
4 of 1982,
12 of 1985
Sch.,
16 of 1991
S. 64.
4/1982
S. 2.

**Interpreta-
tion.**

MOTION PICTURE INDUSTRY (ENCOURAGEMENT)

picture producer, means any consecutive period of twelve months commencing on the first or any subsequent anniversary of the day on which the relevant order came into force;

“special licence” means a special licence granted under section 11;

“recognized motion picture producer” means any person declared under section 3 to be a recognized motion picture producer;

“relevant order” used in relation to any recognized motion picture producer means the order under section 3 whereby such recognized motion picture producer is declared to be a recognized motion picture producer.

Minister
may
declare
persons to
be recog-
nized
motion
picture
producers.

3.—(1) The Minister, on the application in writing of any person desirous of engaging in motion picture production in Jamaica, if he is satisfied that it is expedient in the public interest to do so, may, subject to the provisions of subsection (2), subsection (3) and subsection (4), in his absolute discretion by order declare such a person to be a recognized motion picture producer with effect from such date as may be so specified.

(2) (a) The making of any such order shall be subject to such terms and conditions as the Minister may think fit, and which shall be set out in such order and shall in any case be conditional on the applicant undertaking to expend in Jamaica on local disbursement in each production year such sum as may be specified by the Minister and set out in such order.

(b) The amount specified in paragraph (a) shall not be less than that specified in the case of any existing producer.

(3) Before any such order is made on any such application any existing producer shall be notified of the application and shall be entitled to appear before the

Minister and be heard in opposition to the making of such order.

(4) Where the making of any such order is opposed by an existing producer, such order shall not be made if such existing producer satisfies the Minister that—

- (a) the production facilities provided by or available to the existing producer are adequate to the actual or reasonably prospective needs of the applicant; and
- (b) such production facilities will be made available to the applicant on terms that are in accordance with the normal motion picture production practice.

(5) In this section “existing producer” means a person who is a recognized motion picture producer at the time when any other person applies to be declared to be a recognized motion picture producer.

4.—(a) Any order made under section 3 shall, unless previously revoked in accordance with the provisions of this Act, remain in force for such period not exceeding fifteen years as may be specified in the order and may be renewed for a further period of fifteen years or such lesser period as the Minister may in his absolute discretion direct. Duration of order

(b) On the expiration or revocation of any such order the person declared by such order to be a recognized motion picture producer shall cease forthwith to be a recognized motion picture producer.

5. In the event of the Minister being satisfied that a recognized motion picture producer has— Revocation of order.

- (a) failed in any production year to expend in Jamaica on local disbursement the sum specified in the relevant order; or
- (b) failed to comply with any other term or condition set out in the relevant order,

he may in his absolute discretion by notification in the *Gazette* revoke the relevant order and the recognized motion picture producer shall thereupon cease to be a recognized motion picture producer.

Free entry
of plant and
building
materials.

4/1982
S. 3(a).
12/1985
Sch.
16/1991
S. 64.

6.—(1) Every recognized motion picture producer shall be entitled to import into Jamaica any plant, equipment, machinery and materials for the building of studios or for use in motion picture production free of customs duty, stamp duty and general consumption tax provided he satisfies the Commissioner of Customs and Excise that—

- (a) such articles are imported for the purpose of motion picture production; and
- (b) such articles cannot be manufactured locally.

(2) The Minister may for the purposes of this section appoint any person or persons to be an authority to advise the Commissioner of Customs and Excise and the Commissioner of Customs and Excise shall consult such authority if and when it is appointed before deciding whether or not any article can be manufactured locally.

12/1985
Sch.

Relief from
customs
duty, stamp
duty and
tax.
4/1982
S. 3(a).
12/1985
Sch.
16/1991
S.64.

7. Every recognized motion picture producer shall be entitled where he purchases in Jamaica any articles which he would have been entitled by virtue of the provisions of section 6 to import into Jamaica free of customs duty, stamp duty and tax under the General Consumption Tax Act—

- (i) if the Commissioner of Customs and Excise certifies that he is satisfied that customs duty, stamp duty and tax under the General Consumption Tax Act were paid upon the importation into Jamaica of such articles to an amount specified in such certificate, to be paid from the Consolidated Fund a sum equivalent to the amount so specified;
- (ii) if the Commissioner of Customs and Excise certifies that he is satisfied that customs duty, stamp

12/1985
Sch.

duty and tax under the General Consumption Tax Act were paid upon the importation of such articles into Jamaica, but is not satisfied as to the amount of customs duty, stamp duty and tax under the General Consumption Tax Act so paid, to be paid from the Consolidated Fund such sum as the Commissioner of Customs and Excise certifies to be reasonable having regard to all the circumstances of the case.

16/1991
S. 64.16/1991
S. 64.12/1985
Sch.

8.—(1) Every recognized motion picture producer—

(a) who imports into Jamaica any article free of customs duty, stamp duty or general consumption tax; or

Special provisions relating to articles imported free of customs duty, etc.

(b) to whom there is paid any sum under the provisions of section 7 in respect of the purchase by him of any articles in Jamaica,

4/1982
S. 3(b),
16/1991
S. 64.
12/1985
Sch.

shall, upon being required so to do by the Commissioner of Customs and Excise—

(i) keep such record in such form and containing such particulars as may be required by the Commissioner of Customs and Excise of the articles so imported by him or in respect of which he is paid such sum; and

12/1985
Sch.

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

12/1985
Sch.

(iii) 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 office, studio or warehouse under his control for the purpose of examining any such articles which the Commissioner of Customs and Excise may believe to be therein and of satisfying himself of the accuracy of the particulars in relation to such articles contained in such record.

12/1985
Sch.

(2) Every recognized motion picture producer who contravenes the provisions of this section shall be guilty of

an offence and on summary conviction before a Resident Magistrate shall be liable to a fine not exceeding one thousand dollars and in default thereof to be imprisoned for any term not exceeding twelve months or to both such fine and imprisonment.

Restriction upon the disposal of articles imported free of duty, etc.
4/1982
S. 3(b).
16/1991
S. 64.

9.—(1) No article imported into Jamaica by any recognized motion picture producer free of customs duty, stamp duty or general consumption tax under the provisions of this Act or in respect of the purchase of which in Jamaica any recognized motion picture producer is made any payment under section 7 shall be sold, given away or otherwise disposed of by such recognized motion picture producer except—

- (a) in the case of an assignment of the production for the purpose of which such article was imported into Jamaica or was purchased, to the assignee of such production; or
- (b) upon the recognized motion picture producer paying or giving security to the satisfaction of the Commissioner of Customs and Excise for the payment of—
 - (i) in the case of any article imported by him into Jamaica free of customs duty, stamp duty and general consumption tax, an amount equivalent to the amount of customs duty, stamp duty and general consumption tax which would have been payable upon the importation of such article but for the provisions of this Act; or
 - (ii) in the case of any article purchased by him in Jamaica a sum equivalent to the sum paid to him pursuant to the provisions of section 7 in respect of the purchase of such article in Jamaica; or

(c) after the expiration of three years from the date

12/1985
Sch.

4/1982
S. 3(a).
16/1991
S. 64.

of the importation into Jamaica of such article, if such article was imported into Jamaica by the recognized motion picture producer or of the payment to the recognized motion picture producer of any sum under section 7 in respect of the purchase by him in Jamaica of such article, as the case may be.

(2) No such article sold, given away or otherwise disposed of by a recognized motion picture producer to an assignee under the circumstances set out in paragraph (a) of subsection (1) shall be sold, given away or otherwise disposed of by such assignee unless the conditions of paragraph (b) or paragraph (c) of subsection (1) shall first have been fulfilled.

(3) Every person who contravenes the provisions of this section shall be liable to a penalty of three times the value of the article in respect of the disposal of which he contravenes such provisions and in default of payment thereof to be imprisoned for any term not exceeding twelve months.

10.—(1) Notwithstanding anything to the contrary, where any person has been declared by the Minister to be a recognized motion picture producer, such person shall, so long as he remains a recognized motion picture producer, be allowed in each of any five of the eight years of assessment next after the year of assessment in which the relevant order takes effect to set off against his income arising from the business of motion picture production in Jamaica or from the rental in Jamaica of any film studio or from the financing of any motion picture produced in Jamaica one-fifth of his permitted capital expenditure.

Relief from
income tax.

(2) No allowance shall be made under subsection (1) in respect of any year of assessment later than the eighth year after the year of assessment in which the permitted

capital expenditure was incurred.

(3) No loss incurred in connection with motion picture production in any year in respect of which any allowance is granted under this section shall be set off against the profits arising from any other trade, business or vocation carried on by the person to whom the allowance is granted.

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

(4) Notwithstanding anything to the contrary, any recognized motion picture producer may, if a company, distribute any sum or sums set off against profits under subsection (1) to the shareholders or debenture holders in such company as capital moneys free of income tax within two years after the end of the year of assessment in which such sum or sums is set off.

L.N.
165/1999.

(5) In this section "permitted capital expenditure" means such sum as the Commissioner of Taxpayer Audit and Assessment is satisfied has been expended on the purchase or other acquisition of plant, equipment and machinery to be used in motion picture production or for materials, plans, labour and architectural and engineering services to be used in the construction, re-construction, alteration or repair of any studio or for the site of any studio.

Special
licences.

11.—(1) Subject to the provisions of subsection (2) the Minister may grant a special licence to any person to engage in motion picture production for the purpose of producing any particular film to be specified in such special licence subject to such terms and conditions as may be set out in such special licence.

(2) Before any special licence is granted any person who is at the time a recognized motion picture producer shall be notified and shall be entitled to appear before the Minister and be heard in opposition to the grant of such special licence.

12.—(1) No person who is not a recognized motion picture producer or the holder of a special licence acting within the terms and conditions of such special licence shall engage in Jamaica in motion picture production for commercial purposes at a time when any other person is a recognized motion picture producer.

Prohibition of motion picture production for commercial purposes.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and on summary conviction by a Resident Magistrate shall be liable to a fine not exceeding one thousand dollars and in default thereof to be imprisoned for any term not exceeding twelve months or to both such fine and imprisonment and in the case of a continuing offence to a further fine of two hundred dollars for each day during which the offence continues and in default of payment thereof to be imprisoned for any term not exceeding twelve months.

(3) In any prosecution under this section the burden of proof shall lie upon the defendant to satisfy the Resident Magistrate that the motion picture production the subject of the charge was not engaged in for commercial purposes.

(4) For the purposes of this section "motion picture production for commercial purposes" shall not include the manufacturing, making or producing of motion pictures for personal or private showing, travelogues, educational films or films produced by the Government of Jamaica.

13. From and after the 3rd day of March, 1982—

- (a) no person other than a company incorporated or registered under a law in force in Jamaica shall be declared a recognized motion picture producer; and
- (b) the relief from income tax permitted by section 10 shall not apply to a company declared, after

Restriction on approvals of recognized motion picture producers. 4/1982 S. 4.

MOTION PICTURE INDUSTRY (ENCOURAGEMENT)

that date, to be a recognized motion picture producer.

4/1982
S. 4.

PART II—Provisions applicable to recognized motion picture producers approved after the 3rd day of March, 1982

Recognized motion picture producers to whom this Part applies.

Relief from income tax under this Part.
4/1982
S. 2.

14. This Part applies to any company declared to be a recognized motion picture producer pursuant to sections 3 and 13 on or after the 3rd day of March, 1982.

15.—(1) Notwithstanding anything to the contrary, in lieu of the relief from income tax permitted under section 10, a recognized motion picture producer to whom this Part applies shall be entitled to relief from income tax in respect of the profits or gains earned in the business of motion picture production in Jamaica.

(2) The relief from income tax granted under subsection (1) shall be in respect of each motion picture produced in Jamaica, and such relief shall be for a period of nine years from the date of the first release or exhibition of that motion picture production.

(3) Subject to the provisions of this Part, where a recognized motion picture producer to whom this Part applies incurs capital expenditure in the acquisition of motion picture facilities, an allowance (in this Part referred to as “an investment allowance”) equal to seventy *per centum* of such capital expenditure shall, in lieu of an initial allowance or any other similar allowance under the Income Tax Act, be made to him for the year of assessment in the basis period for which such expenditure is incurred.

(4) Subject to the provisions of this Part, where an investment allowance is made under this Part in respect of buildings or structures the provisions of the First Schedule to the Income Tax Act or any other provisions of that Act

applicable to initial allowances granted pursuant to paragraph 1 of Part I of that Schedule shall apply, with the necessary adaptations to the investment allowance made under this Act as they apply to initial allowances aforesaid except that—

- (a) the amount of an investment allowance shall not be treated as written off by virtue of sub-paragraph (2) of paragraph 4 of Part I of that Schedule; and
- (b) the amount of an investment allowance shall not be written off in ascertaining the written down value of the building or structure or taken into account for the purposes of sub-paragraph (4) of paragraph 3 of Part I of that Schedule.

(5) Notwithstanding anything to the contrary, a recognized motion picture producer shall, in respect of any capital expenditure, be entitled to claim, as he thinks fit, the amount of any investment allowance or annual allowance in the year of assessment in which the expenditure is incurred or, in so far as not previously claimed, in any subsequent year of assessment.

(6) Subject to the provisions of this Part, where an investment allowance is made under this Part in respect of machinery or plant, the provisions of the First Schedule aforesaid or any other provisions of the Income Tax Act applicable to initial allowances granted pursuant to paragraph 1 of Part III of that Schedule shall apply with the necessary adaptations to the investment allowance made under this Act as they apply to initial allowances aforesaid except that the amount of an investment allowance shall not be written off in ascertaining the written down value of the machinery or plant or taken into account for the purposes of paragraph 3, paragraph 4 or paragraph 5 of Part III of that Schedule.

(7) Notwithstanding the provisions of paragraph 6 of Part I of the Schedule aforesaid, the making of an investment allowance pursuant to this Act in respect of any expenditure shall not preclude the grant of annual allowances or balancing allowances in respect of that expenditure in accordance with the provisions of Part I of the Schedule aforesaid.

(8) No loss incurred in connection with motion picture production in any year in respect of which any allowance is granted under this section shall be set off against profits or gains arising from any other trade, business or vocation carried out by the person to whom the allowance is granted.

(9) In this section capital expenditure incurred in the acquisition of motion picture facilities means—

- (a) sums expended on the purchase, construction, repair or alteration of studios, laboratories, offices, dressing rooms, workshops and screening rooms necessary for the production of motion pictures on films or tapes or otherwise; and includes, where relevant, sums expended on labour, architectural and other engineering services; and
- (b) sums expended for materials, equipment, machinery, plans and other items used in motion picture production.

Conditions applicable to investment allowance. 4/1982 S. 4.

16. No investment allowance shall be made in respect of any expenditure on an asset if when the asset comes to be used it is not used for the purpose of motion picture production.

Buildings and structures bought unused. 4/1982 S. 4.

17. Where expenditure is incurred on the construction of a building or structure and before that building or structure is used the interest therein of the person who incurred such expenditure is sold—

- (a) the expenditure actually incurred in the construction thereof shall be left out of account for the purposes of this Act; but
- (b) the person who buys such interest shall, subject to section 18, be deemed for those purposes to have incurred on the date when the purchase price becomes payable expenditure on the construction thereof equal to the said expenditure or on the net price paid by him for the said interest, whichever is the less:

Provided that where such interest in the building or structure is sold more than once before the building is used the provisions of paragraph (b) of this section shall have effect only in relation to the last of those sales and reference to "the expenditure incurred on the construction of a building or structure" shall include reference to expenditure on the alteration of such building or structure incurred prior to the last of those sales.

18.—(1) If in the case of any expenditure any such event as is mentioned in subsection (2) occurs within the period of three years following the year of assessment in the basis period for which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure or if such an allowance has been made before the occurrence of the event it shall be withdrawn.

Withholding
and with-
drawal of
allowances.
4/1982
S. 4.

- (2) The events referred to in subsection (1) are—
 - (a) any change in the status of the company incurring the expenditure whereby the company ceases to be a recognized motion picture producer;
 - (b) any appropriation of the asset representing the expenditure made by the person incurring the expenditure or an associate of his to a purpose other than the purpose of motion picture production;

- (c) any sale or transfer of the asset representing the expenditure made by the person incurring the expenditure or an associate of his otherwise than to a person acquiring the asset for the purpose of motion picture production;
- (d) any sale, transfer or other dealing with the asset representing the expenditure by the person incurring the expenditure or an associate of his being a case where it appears either—
 - (i) that the expenditure was incurred in contemplation of the asset being so dealt with; or
 - (ii) that the sole or main benefit which accrued from that person's incurring the expenditure and the asset being so dealt with was or derived from investment and other allowances in respect of the asset,

and not being a case where it is shown either that the purpose of obtaining tax allowances was not the sole or main purpose of that person's incurring expenditure or of the asset being so dealt with, or that his incurring the expenditure and the asset being so dealt with were *bona fide* business transactions and were not designed for the purpose of obtaining tax allowances.

(3) Where an investment allowance in respect of any expenditure is withheld or withdrawn under this section, such initial allowance (if any) as might have been made in respect of that expenditure but for section 15 of this Act shall be made.

Information
to be
furnished
to Commis-
sioner of
Income
Tax.
4/1982
S. 4.

19.—(1) The person who has incurred any expenditure in respect of which an investment allowance has been made and has not been withdrawn shall give notice to the Commis-

[The inclusion of this page is authorized by L.N. 3/2001]

sioner of Taxpayer Audit and Assessment if, to his knowledge, any of the following events occurs at any time before the expiration of the period of three years following the year of assessment in the basis period for which the expenditure was incurred, that is to say—

L.N.
165/1999.

- (a) the asset in respect of which it was incurred is sold by him or an associate of his to a person who is not carrying on motion picture production; or
- (b) the asset is appropriated by him or an associate of his to a purpose other than the purpose of motion picture production.

(2) Any notice of a sale or transfer given under subsection (1) shall state the name and address of the person to whom the sale or transfer is made.

(3) Any person who without reasonable cause fails to comply with this section shall be liable to a penalty equal to six hundred dollars plus three times the amount of the investment allowance made in respect of the expenditure in question.

20. All such additional assessments and adjustments of assessments under the Income Tax Act shall be made as may be necessary for or in consequence of the withdrawal of an investment allowance under this Act.

Adjustments
and assess-
ments.
4/1982
S. 4.

21. No allowance shall be made under the provisions of this Act in respect of capital expenditure in relation to which relief from income tax is given by virtue of any of the following Acts, that is to say—

Exclusion
of relief
under this
Act where
relief
granted
under other
enactments.
4/1982
S. 4.

The Industrial Incentives Act

The Export Industry Encouragement Act

The Industrial Incentives (Factory Construction) Act

The Petroleum Refining Industry (Encouragement) Act
The Shipping Incentives Act.

Carry forward of allowances not fully utilized, 4/1982 S. 4.

22. To the extent that an investment allowance to which a recognized motion picture producer is entitled under this Part is not utilized in the year of assessment in which the producer becomes entitled thereto pursuant to this Part, that allowance or the remainder thereof, as the case may be, shall be made to that producer in the following years of assessment until the allowance has been fully utilized.

Dividends and capital distribution, 4/1982 S. 4.

23.—(1) Every motion picture producer to whom this Part applies shall place in a separate account all profits or gains relieved from income tax pursuant to section 14, and where such producer intends to pay a dividend to its shareholders out of such profits or gains, such dividend shall be paid out of such account.

(2) Where, pursuant to section 15, in respect of any capital expenditure an investment allowance is made or an amount is written off as annual allowance in any year of assessment the recognized motion picture producer shall be entitled to distribute as dividends to its shareholders the amount of the investment allowance so made and the amount of the annual allowances so written off.

L.N. 165/1999.

(3) Unless, pursuant to the first proviso to section 37 of the Income Tax Act, the Commissioner of Taxpayer Audit and Assessment otherwise authorizes, income tax shall be deducted by a recognized motion picture producer which pays any dividend pursuant to subsection (1) or subsection (2) as if such dividend had been paid out of profits or gains within the meaning of the provisions 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.

(4) A recognized motion picture producer making deductions of income tax pursuant to subsection (3) shall be deemed to be collecting income tax on behalf of the Commissioner of Inland Revenue and shall pay to the Commissioner of Inland Revenue or to such person as he may direct the amounts so deducted. ^{12/1985}
Sch.

(5) A shareholder to whom a dividend is paid pursuant to subsection (1) shall be exempt from income tax in respect thereof if he is resident in Jamaica.

(6) If any such shareholder is not resident in Jamaica but resident in a country in relation to which an order under section 83 of the Income Tax Act is in force and is liable to income tax in respect of such profits or gains in the country in which he is resident, he shall be exempted from so much of the income tax in respect of those profits or gains as the Commissioner of Taxpayer Audit and Assessment is satisfied exceeds his liability in respect of such profits or gains in the country in which he is resident. ^{L.N.}
^{165/1999.}

(7) If any such shareholder is resident in a country in relation to which an order under section 83 of the Income Tax Act is not in force the exemption granted by this section shall not apply.

(8) The exemption from income tax created by this section shall not exceed as regards the rate of tax from which the shareholder is relieved the rate of tax which would but for the provisions of this Part have been paid by the recognized motion picture producer on the profits or gains out of which the dividend is paid.

(9) Save as is otherwise provided in this Part 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 recognized motion picture producer pursuant to subsection (1) or subsection (2).

PART III—*Ancillary*

Regulations.
4/1982
S. 4.

24. 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 motion picture producer to which section 10 applies falls partly within and partly outside the period during which relief from income tax is enjoyed by such motion picture producer under this Act;
- (b) for the adjustment of allowances and capital expenditure incurred in the acquisition of motion picture facilities; and
- (c) prescribing any other matter or anything which may be, or is required by this Act to be prescribed.