

Development Aid Act

Act No. 1981-15

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Assent - 23.7.1981

ARRANGEMENT OF SECTIONS.

Section

Preliminary Provisions.

1. Short title.
2. Interpretation.

Administrative Provisions.

3. Administration of Act by Minister.
4. Development Aid Advisory Committee.
5. Secretary.
6. Consultation by Minister with Committee.
7. Register of licences.

Issue of Licences.

8. Applications for licences.
9. Power to require further information.
10. Criteria for granting licences.
11. Conditions of licences.
12. Issue of licences.
13. Amendment of licences.

Benefits under Licences.

14. Relief of gains and profits from income tax.

15. Relief of dividends from income tax.

15A. Relief from import duty.

15B. to 15H. *Repealed.*

Miscellaneous Provisions.

16. Cancellation of licences.

17. Applications for review.

18. Publication of decisions.

19. Power of Commissioner to defer assessment.

20. Regulations.

21. *Repealed.*

22-23. *Repealed*

AN ACT TO PROVIDE FOR RELIEF FROM INCOME TAX IN RESPECT OF INCOME DERIVED BY APPROVED PROJECTS FOR DEVELOPMENT IN GIBRALTAR.

Preliminary Provisions.

Short title.

(a) This Act may be cited as the Development Aid Act, and shall be read with and deemed to be part of the Income Tax Act.

Interpretation.

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

“Committee” means the Development Aid Advisory Committee established by section 4;

“licence” means a licence issued under section 12;

“licensee” means the person to whom a licence that is for the time being in force has been issued;

“Minister” means the Chief Minister or such other Minister as the Chief Minister may from time to time designate by notice in the Gazette;

“new project” includes any new project for the extension, by means of any major structural alteration, of any existing asset or facility;

“prescribed” means prescribed by Regulations made under section 20;

“secretary” means the secretary to the Committee.

Administrative Provisions.

Administration of Act by Minister.

3. Subject to the provisions of this Act, the Minister shall be charged with its administration.

Development Aid Advisory Committee.

4.(1) There is hereby established a Committee, to be known as the Development Aid Advisory Committee.

(2) The Committee shall consist of not fewer than two and not more than four persons, who shall be appointed by the Chief Minister.

(3) No person shall be qualified to be appointed as or to hold office as a member of the Committee unless he is a public officer in the service of the Government.

Secretary.

5. The Minister shall appoint a secretary to the Committee.

Consultation by Minister with Committee.

6.(1) Subject to the provisions of this Act, the Minister shall consult with the Committee in the exercise of his functions and powers under this Act.

(2) For the purposes of consultation, the Committee shall meet at such times and places as the Minister shall appoint.

(3) No business shall be transacted by the Minister in consultation with the Committee unless not fewer than two members of the Committee are present.

(4) The advice of the Committee shall be recorded in minutes to be kept by the secretary.

(5) Any member who dissents from the advice of the other member or members of the Committee may require that his dissenting advice be recorded.

(6) Where the Minister acts against the advice of the Committee, he shall record in the minutes his reasons for so doing.

Register of licenses.

7.(1) The secretary shall maintain a register containing duplicate copies of all licences issued under this Act.

(2) The secretary shall cause to be entered in the register, in relation to every licence, details of every amendment or cancellation of the licence, and such other particulars as may be prescribed under this Act.

(3) Any member of the public may, on payment of a prescribed fee, inspect the register at the office of the secretary.

Issue of Licences.

Applications for licences.

8.(1) Every application for a licence shall be made by the applicant in writing, in the prescribed form, to the secretary.

(2) Every application shall also contain such further information as may be prescribed.

(3) On receiving an application, the secretary shall forward copies to the Minister and to each member of the Committee.

Power to require further information.

9. Before determining an application, the Minister may require the applicant to submit through the secretary such further information as the Minister reasonably considers necessary or desirable in order to determine it.

Criteria for granting licences.

10. (1) On considering an application for a licence, the Minister may grant the application if and to the extent that the applicant satisfies the Minister that the project fulfills the criteria specified in subsection (2) or (3), but shall otherwise refuse the application.

(2) The criteria to which subsection (1) refers are as follows:

(a) the project in respect of which the application is made shall be a new project the effect of which is—

(i) to create a tangible and immovable asset in Gibraltar that will remain in existence after the applicant has ceased to derive the benefits that would be conferred by the issuing of the licence; and

(ii) to provide more than two additional units of housing accommodation in Gibraltar; or

(iii) to contribute materially to the development of the tourist industry of Gibraltar; or

(iv) to provide any new industry in Gibraltar; or

(v) to afford new employment opportunities or career prospects in Gibraltar; or

(vi) otherwise to improve materially the economic or financial infrastructure of Gibraltar; and

(b) the project shall be one which is for the economic benefit of Gibraltar; and

(c) the project shall be one which—

(i) in the case of a project referred to in paragraph (a)(ii) above, will be completed within a period of two years following the issue of the licence and on the execution of which the applicant will expend not less than the prescribed amount;

(ii) in the case of a project referred to in paragraph (a)(ii) above, will be completed within a period of five years following the issue of the licence and on the execution of which the applicant will expend not less than the prescribed amount;

(iii) in the case of a project referred to in paragraphs (a)(iii) to (a)(vi) above, will be completed within a period of two years following the issue of the licence and on the execution of which the applicant will expend not less than the prescribed amount;

(iv) in the case of a project referred to in paragraphs (a)(iii) to (a)(vi) above, will be completed within a period of five years following the issue of the licence and on the execution of which the applicant will expend not less than the prescribed amount

(d) the proposed management for the project shall be such as to be likely to be effective and competent.

(3) In exceptional circumstances—

(a) the Minister may grant an application in respect of a project on which the applicant will expend not less than the prescribed amount in the case of a project referred to in subsection 2(a)(ii), and any other prescribed amount in the case of a project referred to in subsection 2(a)(iii) to (vi) notwithstanding that the project will not be completed within 2 years, on the condition that the project shall be completed within five years following the issue of the licence or within such lesser period as the Minister shall specify: and

(b) the Minister may grant an application in respect of a project on which the applicant will expend not less than the prescribed amount in the case of a project referred to in subsection 2(a)(ii), and any other prescribed amount in the case of a project referred to in subsection 2(a)(iii) to (vi) notwithstanding that the project will not be completed within five years, on the condition that the project shall be completed within such greater period following the issue of the licence as the Minister shall specify.

(4) In the case of a project that has been commenced before the issue of a licence under this Act, the sums of money referred to in subsections (2) and (3) may include any money expended on the project before the issue of the licence.

Conditions of licences.

11. (1) In granting an application for a licence, the Minister may, subject to subsections (2) and (3) of section 10, attach such conditions as he thinks fit to the licence, including (but without limiting the conditions he may so attach)—

(a) any condition as to the amount to be expended on the project that will qualify as capital expenditure for the purposes of this Act;

(b) any condition as to the period for which the licence shall remain in force; and

(c) any condition requiring the licensee to give security for the performance of his obligations under the licence.

(2) Where a licence is granted to a company, it shall in every case be a condition of the licence that the licensee shall submit to the Commissioner of Income Tax such information as the Commissioner may from time to time require in order to determine whether and to what extent any dividend is a dividend to which section 15 applies.

Issue of licences.

12. Where the Minister grants a licence under section 10 (1), the secretary shall issue to the applicant a licence, in the prescribed form and specifying the conditions (if any) on which it has been granted.

Amendment of licences.

13. (1) Subject to subsections (2) and (3) of section 10 and to subsections (2), (3), and (4) of this section, the Minister may on application by a licensee—

(a) amend the licence by approving its transfer to any other person; or

(b) amend any other term or condition of the licence.

(1A) Notwithstanding subsection (1), no application shall be considered for the extension of the completion date for a project for which a development aid licence has been issued unless the licensee has

lodged such application with the secretary before the expiry date for the completion of the project.

(2) Without prejudice to the generality of the discretion conferred on the Minister by subsection (1), the Minister may refuse to approve a transfer under subsection (1) unless the proposed transferee submits to the Minister such information as the Minister might require if the proposed transferee were an applicant for the issue of a licence de novo; and for the purposes of this subsection, section 16 shall apply as if the information were submitted by him pursuant to an application for a licence.

(3) In amending a licence by approving its transfer under subsection (1), the Minister may attach such conditions as he thinks fit to his approval.

(4) Where the Minister has amended a licence by approving its transfer under subsection (1),—

(a) subject to paragraph (b), the transferee shall thereupon become the licensee for the purposes of this Act;

(b) all benefits that have accrued to the person who was the licensee immediately before the amendment of the licence shall remain benefits to which that person is entitled; and

(c) all other benefits under the licence shall, as they accrue, be benefits that accrue to and for the benefit of the person to whom the licence is transferred, to the exclusion of the other person—

but so that nothing in this subsection shall authorize the conferring on one or more persons of benefits that in the aggregate exceed the benefits provided for in the licence immediately before the transfer.

Benefits under Licences.

Relief of gains and profits from income tax.

14. (1) Where a licensee has complied with the conditions of his licence, he shall not be liable to pay income tax in respect of the gains and profits arising from the project to which the licence relates before the year of assessment in the basis period of which the aggregate gains and profits (after deducting all losses that are allowable under section 20 of the Income Tax Act) first exceed the capital expenditure on the project, determined in accordance with this section.

(2) In determining the sum which shall qualify as capital expenditure—

(a) no account shall be taken of any amount paid or agreed to be paid for any existing business or commercial undertaking in Gibraltar or goodwill;

(b) account may be taken of the cost of reclaiming land for the purpose of the project, but except in such a case no account shall be taken of the cost of any land; and

(c) where the Crown has allocated any site at a nominal rent for the purpose of the project, there shall be deducted from the amount that would otherwise qualify as capital expenditure the sum that is equal to the difference between the nominal rent and the rent which could reasonably be expected to have been paid if the allocation had been made on a strictly commercial basis during the period in respect of which the licensee is by virtue of his licence not liable to pay income tax.

(3) Subject to subsection (2) and to any condition of the licence, the determination of the sum which shall qualify as capital expenditure shall be made, in each case, by the Minister in his discretion.

(4) For the purposes of this section,—

(a) during the period in respect of which a licensee is by virtue of his licence not liable to pay income tax, all gains, profits and losses made or suffered by him shall be computed and determinations shall be made in accordance with the provisions of the Income Tax Act as if he were not so exempted from liability to pay income tax;

(b) the assessment in respect of the first year for which the licensee is liable to pay income tax on the gains and profits arising from the project to which the licence relates shall be equal to the difference between the aggregate gains and profits, less any losses, to the date to which accounts have been made up in the preceding year and the capital expenditure as determined under this section; and thereafter assessments shall be made on the basis provided in subsection (1) or (2) of section 8 of the Income Tax Act; and

(c) where a project consists of further development of an existing undertaking, the gains and profits of the undertaking to which the further development relates shall be treated as the gains and profits in respect of which the licensee, by virtue of his licence, is not liable to pay income tax.

(5) Notwithstanding section 16 or section 18 of the Income Tax Act, no deduction shall be allowed to a licensee under either of those sections in respect of any item which has been taken into account as capital expenditure, in accordance with the provisions of this section, on the project to which his licence relates.

Relief of dividends from income tax.

15. (1) Where the conditions of a licence that has been issued to a company have been complied with, no person specified in subsection (3) shall be liable to pay income tax on any dividend that is paid out of gains or profits of the company on which, by virtue of section 14, it is not liable to pay income tax.

(2) Notwithstanding subsection (1)–

(a) the dividends exempted from tax under this section shall not exceed in the aggregate the capital expenditure on the project to which the licence relates as determined in accordance with section 14; and for that purpose the Commissioner of Income Tax may determine the proportion of each dividend that shall be exempted;

(b) this section shall not apply in respect of any dividend that is declared after the end of the year of assessment next following that year of assessment in respect of which the licensee first becomes liable to pay income tax on the gains and profits arising from the project to which the licence relates; and

(c) a company which is ordinarily resident in Gibraltar shall deduct as provided in section 39(1) of the Income Tax Act whether or not the dividend is exempted under this section from income tax, but the Commissioner of Income Tax shall, on being satisfied that the dividend is so exempted or is partly exempted, authorize the company to refund the appropriate amount to the shareholder.

(3) Subsection (1) of this section refers to any person–

(a) who receives a dividend to which that subsection relates directly, as a shareholder of the licensee; or

(b) who receives wholly or partly the money comprising any such dividend indirectly, as shareholder of any other company, if since being distributed as a dividend by the licensee, that money has not been paid to any person otherwise than by way of distribution as a dividend to one or more shareholders in any company.

Relief from import duty.

15A. Where the conditions of a licence that has been issued to a licensee pursuant to section 10(2)(a)(iv), 10(2)(b), 10(2)(c) and 10(2)(d) have been complied with, the licensee shall not be liable to pay duty on the

importation of goods into Gibraltar in any case where the Chief Minister certifies it to be appropriate in the public interest.

15B to 15H. *Repealed.*

Miscellaneous Provisions.

Cancellation of licences.

16. (1) Where the Minister is satisfied on reasonable grounds that—

- (a) a licensee has submitted to the secretary any information relating to his application for a licence or to his licence that was at the time of the submission untrue in any material particular, and the licensee submitted the information knowing it to be untrue or recklessly and not caring whether it was true or untrue; or
- (b) a licensee has submitted to the secretary any estimate relating to his application for a licence or to his licence, and the estimate was inaccurate or misleading in any material particular, and the licensee submitted the estimate knowing it to be inaccurate or misleading, or recklessly and not caring whether it was inaccurate or misleading; or
- (c) the purpose or the effect of the project to which a licence relates has changed since the granting of the licence; or
- (d) a licensee has contravened or failed to comply with any condition of his licence—

the Minister may cancel the licence.

(2) Before exercising his power of cancellation under subsection (1), the Minister shall cause the licensee to be informed in writing of the ground on which cancellation is to be considered, with sufficient particularity to inform the licensee of the nature of the allegations against him, and shall also give the licensee a reasonable opportunity to be heard on the matter.

(3) Where the Minister cancels a licence under subsection (1)—

- (a) the licence and the benefits accruing under it shall cease to have effect;
- (b) the secretary shall inform the licensee of that fact; and
- (c) the licensee shall within 7 days after being so informed (or within such further period as the secretary may allow) surrender his licence to the secretary.

(4) Where the Minister cancels a licence under subsection (1), the licensee may within 21 days after being informed of the cancellation appeal against the decision of the Minister to the Supreme Court, and on hearing the appeal the court may confirm, vary or reverse the decision of the Minister, subject to such conditions as the court may determine.

Applications for review.

17. (1) A person who is aggrieved by any decision of the Minister—

- (a) under section 10 to refuse to grant his application for a licence; or
- (b) under section 11 to attach any condition to a licence granted to an applicant; or
- (c) under section 13 to refuse to amend his licence,

may within twenty-one days after being notified of the decision, apply to the Chief Minister to review the

decision.

(2) Every application for review shall be made by way of a submission in writing, and the applicant shall not be entitled to appear in person or by any representative on the application.

(3) On considering the application the Chief Minister may, subject to subsections (2) and (3) of section 10, confirm, vary or reverse the decision of the Minister.

Publication of decisions.

18. (1) Where—

- (a) the Minister grants a licence under section 10(1); or
- (b) the Minister amends any term or condition of a licence under section 13; or
- (c) the Minister cancels a licence under section 16(1),

the secretary shall cause notice of the decision to be published in the Gazette.

(2) Every notice under subsection (1) shall specify—

- (a) the number assigned to the licence in the register;
- (b) the name and address of the licensee; and
- (c) the date of the decision,

and shall briefly describe the effect of the decision.

(3) In this section, references to a decision by the Minister to grant or amend a licence include references to a decision by the Chief Minister under section 17 to grant or amend a licence.

(4) A failure to comply with this section shall not invalidate a decision.

Power of Commissioner to defer assessment.

19. For the purposes of sections 14 and 15, in respect of any income which by virtue of either of those sections will not be liable to income tax if a licence is complied with, the Commissioner of Income Tax may defer any assessment of any person for income tax until the time allowed by the licence for compliance with the conditions of the licence has expired.

Regulations.

20.(1) The Minister may from time to time make regulations for all or any of the following purposes:

- (a) prescribing forms of applications and the procedure to be followed in any application under this Act;
- (b) prescribing any additional information to be submitted in support of any application under this Act;
- (c) prescribing the fee for inspection of the register, financial thresholds that will apply for granting licences and the forms of licences;

- (d) requiring licensees or classes of licensee to submit specified information relating to their licences to the secretary or to the Minister or to the Commissioner of Income Tax;
- (e) prescribing the procedure to be followed on applications for review under section 17;
- (f) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

(2) The Chief Justice may from time to time make rules prescribing the procedure to be followed on appeals under section 16(4).

21. *Repealed*

22. *Repealed*

23. *Repealed*