

CHAPTER 59C

BARBADOS FOREIGN SALES CORPORATION 1984-45

This Act came into operation on 17th December, 1984.

Amended by:

1994-6

2001-29

2007-26

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

2002

2007

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 59C

BARBADOS FOREIGN SALES CORPORATION 1984-45

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BARBADOS

**BARBADOS FOREIGN SALES CORPORATION
1984-45**

An Act to make provision for income tax and other concessions to foreign sales corporations established in Barbados.

[Commencement: 17th December, 1984]

**PART I
PRELIMINARY**

Short title

1. This Act may be cited as the *Barbados Foreign Sales Corporation Act*.

Interpretation

2.(1) In this Act,

- (a) [“foreign sales corporation” means [a] corporation which
 - (i) is incorporated under the *Companies Act*, Cap. 308; and

- (ii) either
 - (A) is qualified to be regarded as a foreign sales corporation under the laws of a state specified in the *First Schedule*; or
 - (B) has elected within a period indicated to the Minister by the corporation to be so regarded in [such a] state;]
 - (b) “foreign trade transaction” means any transaction
 - (i) entered into by a foreign sales corporation with persons resident outside Barbados; and
 - (ii) which, pursuant to any legislation of any country mentioned in the *First Schedule*, is the source from which foreign trade income is derived for the purposes of establishing the tax liability of a foreign sales corporation in that country;
 - (c) “Minister” means the Minister responsible for Finance.
- (2) For the purposes of this Act, the following are residents of Barbados:
- (a) an individual ordinarily resident in Barbados or a citizen of Barbados with a residence in Barbados;
 - (b) subject to subsection (3), any incorporated or other body incorporated, formed, organised or registered in Barbados.
- (3) Notwithstanding subsection (2)(b), the following are not residents of Barbados:
- (a) a person licensed under the *Off-Shore Banking Act*, Cap. 325 or the *Exempt Insurance Act*, Cap. 308A;
 - (b) any body corporate that is entitled to income tax or other exemptions under the *International Business Companies Act*, Cap. 77, the *Shipping*

(Incentives) Act, Cap. 90A, the Caribbean Finance Corporation Act, Cap. 93B or such other enactment as the Minister by order specifies.
[1994-6]

[1994-6]

PART II

LICENSING OF FOREIGN SALES CORPORATIONS

Licensing requirements

3.(1) Subject to section 17, no person (referred to in this Act as a “foreign sales corporation”), may engage in foreign trade transactions from within Barbados without a licence under this Act.

(2) No licence may be issued under this Act to a person other than a body corporate that satisfies the following requirements:

- (a) it is incorporated under the *Companies Act*, Cap. 308;
- (b) its principal object and activity is engaging in foreign trade transactions; and
- (c) none of its shareholders is a resident of Barbados.

[1994-6]

Application requirements

4.(1) A company wishing to obtain a licence under this Act must apply to the Minister in such form as the Minister approves.

(2) An application for a licence must be accompanied by the application fee specified in paragraph 1 of the *Second Schedule*.

(3) On the receipt of an application the Minister may issue a licence under this Act.

(3A) The Minister may, by instrument in writing, delegate the power conferred on him by subsection (3) to any public officer in the Ministry of Finance.

[1994-6]

(4) The issue of a licence under this section is subject to the payment of the fee specified in paragraph 2 of the *Second Schedule* in respect of the category of foreign sales corporation specified therein.

Validity of licence

5. A licence issued under this Act remains valid until revoked, and is renewable annually on payment of the fee specified in paragraph 3 of the *Second Schedule*.

[1994-6]

Surrender or revocation of licence

6.(1) A licensee may by notice in writing to the Minister surrender its licence from such date as may be specified in the notice, and from the date so specified the licensee ceases to be a foreign sales corporation.

(2) Subject to subsection (3), the Minister may revoke a licence

(a) if a licensee

(i) fails to comply with a condition of its licence,

(ii) ceases to be a foreign sales corporation under the laws of a country mentioned in the *First Schedule*, or

(iii) is in breach of any duty or obligation imposed upon it by this Act;
or

(b) on grounds of public policy.

[2001-29]

(3) Before revoking a licence under subsection (2) the Minister shall afford a licensee an opportunity

(a) to show cause why the licence should not be revoked; or

- (b) to take such steps as may be appropriate to remedy any breach of this Act to avoid revocation.

[1994-6]

PART III

SPECIAL TAX AND OTHER EXEMPTIONS

Exemption from income and other taxes

7.(1) Notwithstanding the *Income Tax Act*, Cap. 73, a foreign sales corporation is exempt from the payment of all income or other taxes arising from its operations other than income arising under section 13 in respect of which no tax concession is given.

(2) Notwithstanding the *Income Tax Act*, Cap. 73, no foreign sales corporation need withhold any portion of any dividend, interest or other return payable to any person in respect of his holding any shares or securities or debt obligations of any kind of the foreign sales corporation.

Exchange control

8.(1) The *Exchange Control Act*, Cap. 71 does not apply to the foreign trade transactions of a foreign sales corporation.

(2) Section 11(2) of the *Exchange Control Act* does not apply in respect of a person who complies with section 3(2) and who proposes to incorporate a company in Barbados to engage in the business of foreign trade transactions from within Barbados.

Non-application of certain enactments

9.(1) The *Rate of Interest Act*, Cap. 316 does not apply in respect of a foreign trade transaction.

(2) The *Property Transfer Tax Act*, Cap. 84A does not apply to a foreign sales corporation in respect of a transfer of its shares to persons who are not residents of Barbados.

(3) A foreign sales corporation is exempt from the payment of *ad valorem* stamp duty but is liable to pay a fixed duty as specified in the Schedule to the *Stamp Duty Act*, Cap. 91.

Exemptions from customs duty etc.

10. Subject to section 11, a foreign sales corporation may import into Barbados, free of customs duties or consumption tax, articles that are certified by the corporation to the satisfaction of the Comptroller of Customs that are necessary to enable the corporation to conduct its foreign trade transactions from within Barbados.

Disposal of duty free articles

11. No articles acquired by a foreign sales corporation under section 10 shall be disposed of, except with the permission of the Minister of Finance, unless

- (a) the corporation pays to the Comptroller of Customs or gives security to the satisfaction of the Comptroller for the payment of such duties or imposts as were exempted from payment; or
- (b) 5 years have elapsed since the importation of the articles.

Salary concessions

12. Where the Minister is satisfied that a foreign sales corporation requires the services of specially qualified persons in order to carry on its business effectively from within Barbados and such services are unavailable in Barbados and cannot be obtained from outside Barbados without special tax benefits being made available, the Minister may grant in respect of such specially qualified

individuals a tax concession which allows a prescribed percentage of the salary or fees of director, employee or contractor

- (a) to be exempt from income tax in Barbados;
- (b) to be paid in a foreign currency into a trust account without being liable to income tax in Barbados as to the amount paid on any earnings;
- (c) to be paid in a foreign currency in a country specified by the director, employee or contractor;
- (d) to be paid in some other prescribed manner in another currency or otherwise without being liable to income tax in Barbados,

notwithstanding any provisions of the *Income Tax Act*, Cap. 73 or the *Exchange Control Act*, Cap. 71.

Exemption of foreign sales corporation

12A.(1) Subject to this Act and the regulations, the Minister may by order grant benefits under this Act to a licensee for a period not exceeding 30 years.

(2) An order made under subsection (1) shall be subject to negative resolution and may contain such terms and conditions as the Minister considers appropriate.

[1994-6]

Investment in Barbados

13.(1) Subject to this section, a foreign sales corporation may, with the permission of the Exchange Control Authority invest funds in Barbados.

(2) No permission is required for the deposit of funds in a bank licensed under the *Off-Shore Banking Act*, Cap. 325, or with the Caribbean Financial Services Corporation established under the *Caribbean Financial Services Corporation Act*, Cap. 93B.

(3) Where funds are invested in Barbados for a period of not less than 5 years, the Minister may by order grant concessions in respect of taxes on income, duties, levies or other imposts payable on such transactions.

Returns

14. A foreign sales corporation is not required to file annual returns with the Commissioner of Inland Revenue by virtue of the *Income Tax Act*, Cap. 73, but section 76 of that Act applies, notwithstanding that the corporation is exempt from the payment of income tax in respect of certain of its operations.

Income tax deductions

15. Nothing in this Part exempts a foreign sales corporation from its obligation to deduct and pay over to the Commissioner of Inland Revenue amounts required to be deducted from its employees.

Financial statements

16. Notwithstanding section 152 of the *Companies Act*, Cap. 308, a foreign sales corporation is not required to file the financial statements and documents required to be filed under section 147 of that Act, and notwithstanding section 156 of that Act may resolve not to appoint an auditor.

PART IV

MISCELLANEOUS

Cessation of foreign corporation

17. Where a licence is revoked under section 6, the corporation ceases to be a foreign sales corporation.

[1994-6]

Regulations

18. The Minister may make regulations prescribing any matter that is required to be prescribed by this Act.

Amendment of Schedules

18A. The Minister may by order amend the *Schedules*.

Offences

19. A person, other than a person described in section 17, who carries on the business of a foreign sales corporation without a licence under this Act is guilty of an offence and is liable on summary conviction to a fine of \$50 000.

FIRST SCHEDULE

(Section 2)

United States of America including the Commonwealth of Puerto Rico.

SECOND SCHEDULE*(Section 4)*

- | | |
|---|---------|
| 1. Fee for application | \$ 500 |
| 2. Fee of issue of licence | |
| (a) in the case of a foreign sales corporation that has elected pursuant to the laws of any country specified in the <i>First Schedule</i> to be treated as a small foreign sales corporation | \$1 000 |
| (b) in any other case | \$2 000 |
| 3. Fee for renewal payable before 1st January in each subsequent year | |
| (a) in the case of a corporation described in paragraph 2(a) | \$1 000 |
| (b) in any other case | \$2 000 |

[2001-29]