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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Panama's Foreign Owned Call Centres (PA005)
– Final description and assessment

I/ STANDSTILL REVIEW PROCESS (DECEMBER 2017)¹:

a. Description

The Panamanian Call Centre Regulation Law (Law No. 54 of October 25, 2001) provides tax and other special economic zone benefits to call centres established in Panama by foreign investors. However, the special tax exemption is limited to foreign companies who have “commercial use” call centres based in Panama.

For telecommunications, Law 54 of 2001 offers Call Centres the same incentives granted to export processing zones by Law 25 of 1992. The most relevant incentives are similar to those granted to export processing zones:

- No income tax, sales tax, import duty or any other national taxes levied on call centres export operations;
- Special vacation schedules;

¹ Endorsed by ECOFIN on 5 December 2017 (doc. 15429/17).

- Special employee stability regime (three years);
- Market fluctuations as a justified cause for labour contract termination.

Any person exploiting call centre activities duly authorized by the Panamanian Authority of Public Services may benefit from the tax benefits granted to companies operating in ‘export processing zones’. Activities benefiting are those considered ‘export’ services (e.g. the final destination of telecommunication services provided used outside the Panamanian territory).

b. Preferential features/ Benefits available under the regime

The general income tax rate for domestic companies is currently 25%.

A special income tax exemption is limited to foreign companies who have “commercial use” call centres based in Panama (on call centres export operations). Therefore, a preferential tax treatment is granted.

c. Possible concern/What is the problem under the Code?

A regime limited to foreign tax payers and/or to operations outside the territory of the jurisdiction (ring fenced regime) does not meet criteria 1 & 2 of the Code of Conduct which prohibit this type of ring fencing.

The special tax exemption is limited to foreign companies/ export operations. As the tax exemption only applies to the income from foreign operations, the regime seems targeted to foreign enterprises or for activities with foreign entities/markets since tax advantages are likely to be granted only to foreign enterprises or in respect of transactions carried out with non-residents.

Source of information

[*Outsourcing Law Website*](#)

d. Assessment by FHTP:

Not scheduled for review by the FHTP.

e. Assessment by the experts:

	1a	1b	2a	2b	3	4	5
Panama – Foreign owned call centres	V	?	X	?	X	X	V

V = harmful

X = not harmful

Explanation

Gateway criterion - Significantly lower level of taxation:

“Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code”

The general tax rate in Panama is 25%. However, pursuant to the Panamanian Call Centre Regulation Law (PCCRL), a special tax exemption may be granted on call centres export operations. Therefore, the measure provides for a significant lower level of taxation and is potentially harmful under the Code.

Criterion 1 – Targeting non-residents:

“whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents”

Criterion 1 contains two elements. The first element is whether the measure is exclusively available to non-residents or transactions with non-residents (criterion 1a). The second element is whether it is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

1a) Criterion 1a concerns the *de jure* application of the measure.

1b) Criterion 1b is used to complement the assessment under criterion 1a which only looks at the literal interpretation of the measure. It takes account of the *de facto* effect of the measure. Where the majority of taxpayers (or counterparties to transactions) benefiting from the measure are in fact non-residents the measure will fall foul of criterion 1b.

Under the PCCRL, the measure does seem not *de lege* to exclude the residents from the scope of the beneficiaries but such beneficiaries must carry out only call centres export operations and consequently only with non-residents.

There is no information on the *de facto* effect of the measure.

Criterion 2 – Ring-fencing:

“whether advantages are ring-fenced from the domestic market, so they do not affect the national tax base”

As regards criterion 2 the division between criteria 2a and 2b is done in the same way as in the case of criterion 1 (i.e. *de jure* interpretation and *de facto* analysis). In general, a measure is caught by criterion 2 if the advantages are ring-fenced from the domestic market so that they do not affect the national tax base. In most cases, the evaluation against criterion 2 follows closely that of criterion 1.

2a) What has been written under criterion 1a often applies analogously to criterion 2a.

2b) On the basis of the explanations provided above and the marking under criterion 1b, the evaluation of criterion 2b often follows the same reasoning.

Under the PCCRL, the measure does not seem *de lege* to exclude the residents from the scope of the beneficiaries. A confirmation from Panama on this interpretation would be relevant. However, there is no certainty that *de facto* beneficiaries are both domestic and non-residents. We would need to have further information notably on the number of domestic residents carrying out such operations and being granted the exemption provided by the PCCRL.

Criterion 3 - Substance:

“whether advantages are granted even without any real economic activity and substantial economic presence within the Member State offering such tax advantages”

According to the standard practice for the evaluation of a measure against criterion 3, a measure is found harmful under this criterion if there are no specific requirements with regard to real economic activities and notably any requirement with respect to employment obligations.

Pursuant to the PCCRL, the beneficiaries need to be registered with the Registrar or the special committee (“Comisión Nacional de Zonas Procesadoras”) in charge of the registration with respect to the companies operating from the Free Zone (“Zonas Procesadoras”). Such a zone relies on the Law 25 of 1992 which explicitly requires productive investments and does not focus on ‘highly mobile’ activities (intra-group service, co-ordination centre, financial services activities etc.). Additionally, the measure is only available where the beneficiary meets certain employment conditions (e.g. recruitment of a Panamanian staff, except in case of a high expertise needed).

Criterion 4 – Internationally accepted principles:

“whether the rules for profit determination in respect of activities within a multinational group of companies departs from internationally accepted principles, notably the rules agreed upon within the OECD”

The measure does not contradict any internationally embraced principle.

Criterion 5 - Transparency:

“whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way”

All preconditions necessary for the granting of a tax benefit should be clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

Although the conditions to be granted a licence to operate from the Free Zone look clear, the scope of the exemption is unclear because it overrides so many future amendments that might be made to the various tax acts which it exempts.

Overall assessment

“Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community”

In the light of the assessment made under all Code criteria, the regime would be considered as overall harmful.

II/ ROLLBACK REVIEW PROCESS²:

On 4 September 2018, Panama informed the Code of Conduct Group that the Parliament approved the draft law to reform the Call Centre regime to ensure compliance with EU Code of Conduct criteria. The Group agreed that the rollback is sufficient at its meeting of 21 September 2018: see analysis below of the legislation provided.

The Panama Call Centres reform was signed into Law by Panama's President on 17 October 2018, and published in the Official Gazette two days later:

https://www.gacetaoficial.gob.pa/pdfTemp/28637_A/GacetaNo_28637a_20181019.pdf

	1a	1b	2a	2b	3	4	5
Panama – Foreign owned call centres	X	?	X	?	X	X	X

Gateway criterion - Significantly lower level of taxation:

The general tax rate in Panama is 25%. However, pursuant to the new law adopted to regulate the activity of Call Centre for Commercial Use (Call Centres) a full tax exemption on CIT is granted to authorised call centres, although other special tax measures apply. Therefore, the measure provides for a significant lower level of taxation and deserves an assessment under the Code.

Criterion 1 – Targeting non-residents:

The law adopted on 4 September 2018 does not distinguish between transactions with resident and non-resident in order for the tax reduction to be granted.

For what concerns the *de facto* effects of the measure, the information provided by Panama on the use of the regime before the reform are only partial. Panama explained that more information could not be provided as it was not requested to companies under the previous regulation.

Criterion 2 – Ring-fencing:

The law adopted on 4 September 2018 does not exclude residents from the scope of the beneficiaries of the preferential tax treatment.

² Endorsed by the ECOFIN Council on 4 December 2018 (doc. 14364/18 COR 1).

Criterion 3 - Substance:

Art. 4 and 5 of the law adopted on 4 September 2018 set forth substance requirements to be met in order for the tax advantage to be claimed. The measures include a minimum number of employees and a threshold for expenses to be incurred in Panama. Similar provisions will be included for companies that are resident in the Panama-Pacifico Special Economic Zone which benefit from the regime. Other substance requirements were already set in other pieces of legislation, in particular by Law 31/1996 and are still in force.

Criterion 4 – Internationally accepted principles:

The measure does not contradict any internationally embraced principle.

Criterion 5 - Transparency:

All preconditions necessary for the granting of a tax benefit should be clearly laid down in publicly available laws, decrees, regulations etc. before a measure can be considered transparent.

The conditions for a call centre licence to be granted are laid down by the law and no administrative discretion seems to apply.

Grandfathering

Panama did not include any grandfathering provision for companies previously benefitting from the Call Centre regime. The law will therefore be applicable as soon as it enters into force for companies that benefited from the regime before the reform.

Overall Assessment

In the light of the assessment made under all Code criteria, the regime is considered as overall not harmful.

UNOFFICIAL TRANSLATION

UNOFFICIAL TRANSLATION

2

LAW 52

Of 17 October 2018

Which regulates the activity of Call Centre for Commercial Use (*Call Centres*) and sets forth other provisions.

THE NATIONAL ASSEMBLY**DECREES:****Chapter I**

General provisions

Article 1. This Law regulates the activity of Call Centre for Commercial Use (*Call Centres*), applicable to individuals or legal entities that have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) in the Republic of Panama.

Article 2. The application for a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) must be submitted to the National Authority of Public Services (ASEP). This request must meet the requirements established by ASEP.

Once the corresponding concession is obtained, the individual or legal entity for which the concession has been issued may apply the provisions of this Law.

Chapter II

Fiscal regime

Article 3. Individuals or legal entities who have a concession to provide the Service of Call Centre for Commercial Use (*Call Centres*) issued by the National Authority of Public Services (ASEP) will be exempted from direct and indirect taxes, levies, fees, duties and taxes, except as provided in Article 6 of this Law and the rate charged by ASEP. They will

be subject to the other benefits provided by this Law in relation to the services covered by the concession.

Article 4. Revenue from the services covered by the concession to provide the service of Call Centre for Commercial Use (*Call Centres*) issued by ASEP shall be exempt from the income tax in a tax period, provided that during that period the requirements set out below are met:

1. They have maintained an average of not fewer than five full-time workers;
2. They have incurred operating expenses in Panama for not less than 70% of total expenditure directly related to these services; and
3. They comply with what is stated in Article 5 of this Law.

In case of noncompliance with the above stated requirements, revenue from services covered under the concession will be considered as taxable income for income tax purposes, according to the rate established in the Tax Code of the Republic of Panama.

Article 5. Individuals and legal entities that have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) and benefiting from the income tax incentives referred to in this Law must provide the reports and information requested by ASEP under this Law and the regulations issued in its development. In addition, they must submit to that authority (ASEP) a report containing the following information within the first half of each calendar year:

1. A sworn statement signed by the legal representative and an authorised accountant or individual that has a concession to provide services of Call Centre for Commercial Use (*Call Centres*) and a certified public accountant, containing the following information:

- a. Information on the activities undertaken to generate revenue earned during the previous calendar year, specifying in detail which of these activities were the main ones carried out to generate such revenue, indicating which were conducted in Panama and which were conducted abroad.
- b. Total operating expenses incurred to carry out the activities to generate revenue, indicating which of these expenses were directly related to the revenue-generating activities and which were incurred in Panama.
- c. The number of workers responsible for implementing the activities to generate the revenue earned, which remained in the service of the Call Centre for Commercial Use (*Call Centres*) during the previous calendar year, specifying their identity, position or function, and professional title.
2. Audited financial statements.
3. Any additional documentation required by ASEP.

ASEP will act as the receiving authority of the above-described report and must submit it to the Tax Authority (*Dirección General de Ingresos – DGI*), in a period not exceeding sixty calendar days, counted from the date of receipt. The DGI is the competent authority to review and evaluate the information provided in this report, as part of its role overseeing tax obligations and exemptions.

Article 6. Individuals or legal entities that have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) issued by ASEP, except for the provisions set forth in the preceding articles, shall be subject to payment of the following taxes, when applicable:

1. 5% tax on dividends, and will pay only 2% surtax, if no distribution of profits is made, for profits derived from the services covered under the concession to provide the service of Call Centre for Commercial Use (*Call Centres*).
- For this purpose, they shall maintain accounting records and documents that clearly reflect the operations associated with activities of Call Centre for Commercial Use (*Call Centres*).

2. Annual tax, which is 0.5% of the company's capital, with a minimum of one hundred US dollars (B/.100.00) and a maximum of fifty thousand US dollars (B/.50,000.00).
3. Excise tax on certain goods and services.
4. Real estate transfer tax.
5. Property tax.
6. Special Interest Compensation Fund, except for loans secured by bank deposits.
7. Contributions derived from the working relationship between employer and employee, and other benefits set forth in the social security legislation.

Article 7. From the 2019 tax period, individuals or legal entities performing transactions with related parties that are individuals or legal entities who have a concession to provide the Service of Call Centre for Commercial Use (*Call Centres*), are subject to the transfer pricing regime as set out in the Tax Code, except as provided for in Article 762-D of said Code.

Transfer pricing will also be applied to any operation that an individual or legal entity that has a concession to provide the service of Call Centre for Commercial Use (*Call Centres*), performs with related parties established in the Republic of Panama, or that are tax residents of other jurisdictions or are established in the Colon Free Zone, or are operating within the Oil Free Trade Zone under Cabinet Decree 35 of 2003, the Panamá-Pacífico Special Economic Area, the Multinational Corporations Headquarters Regime (SEM), the City of Knowledge, or any other free zones or special economic areas already established or to be created in future.

Individuals or legal entities that have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) even if they are exempt from income tax, are subject to the transfer pricing regime in accordance with the provisions of the Tax Code, except for the application of Article 762-D of said Code.

Chapter III

Migration regime

Article 8. Foreigners who prove having invested from abroad a sum not less than two hundred fifty thousand US dollars (B/250,000.00) in a Call Centre for Commercial Use (*Call Centres*) will be entitled to apply for a Permanent Resident Permit as an Investor in a Call Centre for Commercial Use (*Call Centres*).

The investor in a Call Centre for Commercial Use (*Call Centres*) may choose to prolong his or her stay, after a term of two years, except in those cases where the immigration law, special laws and agreements establish different terms.

Article 9. Foreigners recruited as employees in positions of trust, executive, expert and/or technical level in Call Centres for Commercial Use (*Call Centres*) will be entitled to apply for a Temporary Resident Permit, valid for the term of their contract. This Permit is subject to the rules of the Labour Code.

Article 10. Foreigners wishing to come to the Republic of Panama to assess investment opportunities or to make transactions or business related to Call Centres for Commercial Use (*Call Centres*) may apply for a Short Stay Visa as a trader and investor under Special Laws.

The Short Stay Visa as a trader and investor under Special Laws, granted to said foreigners, will be valid for nine months, upon presentation of the requirements set forth by the immigration regulations of the Republic of Panama.

Article 11. The dependents of individuals requesting or holding the permits mentioned in previous articles shall be entitled to request the following permits:

1. **Dependent of Permanent Resident:** Includes the spouse, children under eighteen, disabled family members and parents dependent on a provisional two-year resident, permanent resident or national.
Children older than eighteen and up to twenty-five years of age may be requested as dependents, provided they study regularly and are economically dependent of the resident or national.
The resident or national who proves to have guardianship or custody of a minor may apply for the minor as a dependent.

2. **Temporary Resident for Family Reunification:** Includes the spouse, children under eighteen and parents of the temporary resident.
Children older than eighteen and up to twenty-five years of age may be requested as dependents provided they are regular students and are economically dependent of the temporary resident.

The temporary resident who proves to have custody or guardianship and care for an elderly person may apply for said elderly person as a dependent.

Article 12. Foreigners who are granted a Permanent Resident Permit as Investor of a Call Centre for Commercial Use (*Call Centres*) shall enjoy the following benefits:

1. Provisional stay for a period of two years.
2. Permanent residence with the right to a personal identity card, once the term of the temporary stay has been completed.

Article 13. The benefits set forth in this Law will be automatically cancelled to any investor who withdraws, transfers, or in any way loses his or her investment. ASEF will report annually to the National Immigration Service the names of the investors to whom they should cancel these benefits.

Article 14. All requests for Temporary or Permanent Residence Permit, referred to in this Law, will be presented directly by the interested party to the National Immigration Service.

Article 15. A foreigner who obtains the Short Stay Visa through a consulate of Panama, must appear before the National Immigration Service within fifteen days of his or her entry into the country in order to be properly registered.

Article 16. All permits referred to in this Law entail the right to multiple exits and entries, valid for the term of the respective permit.

Chapter IV

Special labour provisions

Article 17. Individuals or legal entities which have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) shall establish, in coordination with the Ministry of Labour and Workforce Development and the National Institute of Vocational Training for Human Development, forms of functional training and improvement to the workers who provide their services.

Article 18. Collective disputes that may occur in the Call Centre for Commercial Use (*Call Centres*) shall be resolved by applying the conciliation procedure established in Chapter IV of Title III of Book III of the Labour Code.

In the case of individual disputes, the conciliation procedure provided for in the Organic Regulations of the Ministry of Labour and Workforce Development and in Law 53 of 1975 will apply.

Once the conciliation is over, the workers or their respective social organisation may exercise the right to strike. In this case, they will be governed by the provisions of the Labour Code, including as regards the classification of the strike, which is under jurisdiction of the ordinary labour courts, which in turn establish the procedures regarding labour standards.

Article 19. The Ministry of Labour and Workforce Development will expeditiously process the systems and specific regulations of technical and professional evaluation referred to in paragraph 16, section A, Article 213 of the Labour Code, duly documented through scientific performance studies.

If, at the expiration of one hundred and twenty calendar days, the administrative labour authority has not resolved the corresponding request, the system or regulation will be deemed approved and the employer may enforce it immediately.

Once the system and regulations have been approved, the employer is obliged to display it permanently, in a visible location in each of its facilities.

Article 20. The employer may rotate the employee in various sections of the company or move him or her from one project to another, periodically, according to the needs of the Call Centre for Commercial Use (*Call Centres*), provided the labour conditions of the employee are not worsened.

Article 21. Individuals or legal entities that have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) are bound to pay the legal minimum wage to their employees for the provision of their services. Wages will be paid in instalments not exceeding a fortnight.

Apart from the legal minimum wage, in order to encourage increased performance and productivity of employees, payment of wages through profit sharing, production bonuses, performance incentives, bonuses, perquisites, donations and others incentives may be established. It is understood that such bonuses or any other incentive may not exceed 50% of base salary.

Article 22. Fluctuations in the markets that may trigger considerable loss of revenue earned are proper grounds for the employer to terminate the employment relationship, in addition to those established in paragraph C of Article 213 of the Labour Code.

The employer must request prior authorisation from the labour authorities, ascertaining the respective grounds for termination, in accordance with the provisions of the Labour Code.

Article 23. The employer may set, in advance, the time at which the employee may take holiday, consulting and combining the best interests of the Call Centre for Commercial Use (*Call Centres*) with those of the employee, according to the operation cycles of the company.

To this effect, the employer may provide that all or part of the personnel make use of their holiday at certain times of the year, even if said holiday is not applicable at the time it is enjoyed. The duration of the holiday in the latter case will be compensated with equal working time. The employer may divide into two equal fractions, at most, the annual leave for the employees.

Article 24. Regarding labour relations of the Call Centres for Commercial Use (*Call Centres*), the common rules in the Labour Code, in Law 1 of 1986 and in the special laws that are not contrary to the provisions of this Law shall apply.

Article 25. The parties freely determine the weekly day of rest and mode of use, whether in fixed days or retroactively. Work on the weekly day of rest shall be remunerated with a surcharge of 50%, without prejudice to the right to enjoy another day of rest.

Article 26. In order to promote more employment, individuals or legal entities which have a concession to provide the services of Call Centre for Commercial Use (*Call Centres*) shall endeavour to establish, in coordination with the Ministry of Labour and Workforce Development, mechanisms to avoid, insofar as possible, overtime work by the permanent personnel, replacing them with new personnel.

In any case, overtime work must not exceed three hours a day and shall be paid with a surcharge of 25%.

Chapter V
Additional provisions

Article 27. Article 2 of Law 54 of 2001 is repealed.

Article 28. Article 70 of Law 32 of 2011 is repealed.

Chapter VI
Final provisions

Article 29. Individuals or legal entities that, at the date of entry into effect of this Law, have a concession to provide the service of Call Centre for Commercial Use (*Call Centres*) issued by ASEP, will be eligible for the benefits set out in this Law.

However, those individuals or legal entities that have such a concession and in turn are registered as a company of the Panamá-Pacífico Special Economic Area, shall apply exclusively to this regime under Law 41 of 2004.

ASEP shall maintain and update the relevant information to all concessions to provide the service of Call Centres for Commercial Use (*Call Centres*) granted in the Republic of Panama.

Article 30. This Law repeals Article 2 of Law 54 of 25 October 2001 and Article 70 of Law 32 of 5 April 2011.

Article 31. This Law shall take effect on 1 January 2019.

TO BE PUBLISHED AND ENFORCED.

Legislative proposal 633 of 2018, approved on third hearing in Panama City, on the fourth day of the month of September, two-thousand eighteen.

Signed into Law on 17 October 2018 by the President of the Republic.