



Brussels, 14 March 2019
(OR. en)

7462/19

FISC 171

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group (Business Taxation)
Subject: Cabo Verde's International Business Centres regime (CV001)
– Final description and assessment

Note: whilst the International Business Centres – IBC regime (CV001) was assessed as harmful in 2017, no commitment was sought from Cabo Verde to amend or abolish it (see doc. 6671/18) since it was understood that the secondary legislation was not yet in force at the end of 2017 and that the regime was therefore not actually harmful. This conclusion proved incorrect since the IBC regime was actually harmful, with 5 companies benefiting from it. Furthermore, the regime was amended in December 2017 but without removing its harmful features. Nevertheless, Cabo Verde expressed willingness to reform this regime by the end of 2018 and it was therefore de facto covered under the Code of Conduct Group's monitoring process.

ROLLBACK REVIEW PROCESS (JANUARY 2019)

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 standard corporate income tax rate is 25 %. A company operating within the ambit of IBC benefits from income tax rates that vary from 2.5% to 5% depending on the number of jobs created; for companies providing services (with the exception of tourism, banking and insurance, real estate or construction), the income tax rate is of 2.5% in case of creation of at least 4 jobs.

The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

	1a	1b	2a	2b	3	4	5
Cabo Verde – International Business centres (CV001)	X	?	X	?	X	X	X

V = harmful

X = not harmful

Explanation

Criterion 1 – Targeting non-residents:

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

Art. 19 of Law n. 26/08/2013 as amended by the Budget law 2019 sets forth that the regime is available to both residents and non-residents. Art. 44 of the budget law gives also powers to the government to issue a decree to establish the conditions for a company to apply to the regime and how to calculate the tax base. Cabo Verde will issue such decree by June 2019. The IBC regime is not open to new entrants until the decree will not enter into force. The conditions set forth in art. 44 of the Budget law are applicable to company benefitting from the regime as per 1 January 2019. A negligible number of companies is currently benefitting from the regime.

Criterion 2 – Ring-fencing:

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

The considerations under criterion 1 should also be extended to criterion 2.

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.

The measure includes expressed requirements for real economic activity or substantial economic presence, in particular with regard to job creation.

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 transfer pricing regime in force in Cabo Verde is applicable to entities benefitting from the regime in question. Furthermore, according to the new paragraph 6 of article 19 of Law 26/VIII/2013, these entities must comply with national accounting rules, which are based on international standards.

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.

The measure is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion.

Grandfathering

Cabo Verde did not include any grandfathering provision for companies previously benefitting from the IBC regime. The law will therefore be applicable as per 1 January 2019 for the companies that benefited from the regime before the reform.

Overall Assessment

In the light of the assessment made under all Code criteria, the regime should be considered not harmful under the Code of Conduct. However, the COCG will continue the dialogue with Cabo Verde on the decree to be issued by June 2019 to establish the conditions for a company to apply to the regime and how to calculate the tax base.

The Code of Conduct Group meeting of 30 January 2019 approved the rollback of the regime. This conclusion was endorsed by the ECOFIN Council on 12 March 2019.

Annex 1: Assessment of the old CV001 regime in 2017 (standstill review)

Assessment of the old CV001 regime in 2017 (standstill)

Categories:

- Financial services, group financing and royalty payments
- Exempt and Offshore Companies
- Special economic zones

a. Description

The International Business Centre (Centro Internacional de Negócios, CIN) regime was created by Legislative Decree 1/2011 (published in the Official Gazette of 31 January 2011, amended and republished by Law-Decree 38/2013 of 2 October 2013) and has been in force since 2 March 2011.

It appears, from the publicly available information, that as of September 2015 (which is the latest information update on IBFD website) the International Business Centre is not yet in operation, as the complementary legislation regulating its operation is yet to be published.

Cabo Verde has confirmed that the regime is not in force since complementary legislation hasn't been released. However, should it be in force, the regime doesn't verify all the criteria of the Code of Conduct, as analysed below.

A company has to obtain an authorization to carry on activities in the International Business Centre, according to requirements and rules prescribed in Legislative Decree 1/2011. The Cape Verdean Foreign Investment Agency is the entity responsible for issuing the licences for investors to operate within the International Business Centre, following prior approval by the Foreign Investment Agency.

Authorized companies may be established in one of the three following centres within the International Business Centre, depending on the economic activities to be performed (industrial activities, commercial activities or the provision of services):

- Industrial activities: International Industrial Centre (Centro Internacional Industrial, CII), formed by the industrial free zones to be established by the government
- Commercial activities: International Commerce Centre (Centro Internacional do Comércio, CIC), formed by the commercial free zones to be established by the government;
- Provision of services: International Service Centre (Centro Internacional de Prestação de Serviços, CIPS), which may be established in any location within the territory of Cape Verde.

Source: IBFD, Cape Verde - Corporate Taxation - Country Surveys – Section 1.7.2 (Last Reviewed: 20 September 2015)

b. Preferential (lower taxation than normal):

The Tax Benefits Code provides for the following tax benefits for companies licensed to operate in the International Business Centre to undertake industrial or business activities or to provide services (except for companies engaged in tourism, banking and insurance, real estate, or construction), which may be carried out with other International Business Centre-licensed companies or with non-resident companies without a permanent establishment in Cape Verde:

- A reduced income tax rate of 5%, 3.5% or 2.5% for companies that create 5, 20 or 50 jobs, respectively. The income tax rate is 2.5% in the case of creation of 2 jobs, for companies licensed to operate within the International Service Centre;
- An exemption from customs duties on the importation of certain goods, equipment and materials used within the scope of the activity licensed under the International Business Centre; and
- A VAT and customs duties exemptions.
- An exemption applicable to dividends and interest received by the shareholders of the companies licensed to operate in the IBC has been granted at the beginning of 2016.

c. Possible concern (ring fenced):

Our understanding of Cabo Verde legislation is that under the International Business Centre regime, the tax benefits are limited to activities carried out with other International Business Centre-licensed companies or with non-resident companies without a permanent establishment in Cape Verde.

A regime limited to foreign taxpayers and/or to operations outside the territory of the jurisdiction does not meet criteria 1 & 2 of the Code of Conduct which forbid this type of ring fencing.

d. Assessment :

Criterion	1a	1b	2a	2b	3	4	5	Overall assessment
Cape Verde - IBC (CV001)	V	V	V	V	X	X	X	HARMFUL

V = harmful

X = not harmful

Explanation

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 standard corporate income tax rate is 25 %. A company operating within the ambit of IBC benefits from income tax rates that vary from 2.5% to 5% depending on the number of jobs created; for companies providing services (with the exception of tourism, banking and insurance, real estate or construction), the income tax rate is of 2.5% in case of creation of 2 jobs. The measure therefore provides for a significantly lower level of taxation and is potentially harmful under the Code.

Criterion 1

“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, concerns *de jure* element, aims at measuring whether the regime is exclusively available to non-residents or transactions with non-residents (criterion 1a). The second element, *de facto* element, measures whether the regime is only or mainly used by non-residents or for transactions with non-residents (criterion 1b).

The IBC is *de lege* available to both residents and non-residents, but it is only applicable to transactions carried out with non-residents.

Criterion 2:

“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.

The IBC regime is targeted at activities with foreign entities/markets since tax advantages are granted only for transactions with persons that are not domiciled or resident in Cape Verde. Thus, the tax advantages are ring-fenced from the domestic market and, consequently, do not affect the national tax base.

Criterion 3:

“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.

The measure includes expressed requirements for real economic activity or substantial economic presence.

Criterion 4:

“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 Tax Authorities of Cape Verde inform that the transfer pricing regime is applicable to entities benefitting from the regime in question. Furthermore, according to paragraph 5 of article 19 of the Tax Benefits Code, these entities must comply with national accounting rules, which are based on international standards.

Criterion 5:

“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.

The measure is fully set out and published in the relevant legislation and the practice should not involve any administrative discretion.

Overall assessment:

In light of the assessment made against the Code of Conduct criteria, the regime qualifies as harmful under criteria 1 and 2 of the Code of Conduct.